



**Kairanya & 3 others v Kairanya; Kairanya & 5 others (Interested Parties)
(Succession Cause 2 of 2020) [2023] KEHC 2266 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 2 OF 2020
EM MURIITHI, J
MARCH 23, 2023**

BETWEEN

**ESTHER MUKIRI KAIRANYA 1ST PETITIONER
JOHN KIRIMI KAIRANYA 2ND PETITIONER
JEREMY KAMATHI 3RD PETITIONER
MWENDA JACOB KAIRANYA 4TH PETITIONER**

AND

MARTIN KAIRANYA APPLICANT

AND

**ROSEMARY KANARIO KAIRANYA INTERESTED PARTY
CATHERINE NKATHA MBAYA INTERESTED PARTY
SUSAN MUKUBA KAIRANYA INTERESTED PARTY
JANE KANANU KAIRANYA INTERESTED PARTY
EZRA MUGUNA KAIRANYA INTERESTED PARTY
KAIRANYA INVESTMENTS LTD INTERESTED PARTY**

RULING

1. This is a ruling on two counter-applications filed in the matter, respectively dated March 9, 2022 and May 25, 2022, which are related to proposed mode of distribution of estate assets previously held by the 6th Interested Party, and the substance whereof is discussed in full below.



The 1st Application

2. The Petitioners filed summons for further rectification of grant dated March 9, 2022 pursuant to section 74 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules*, seeking further rectification of the Certificate of Confirmation of grant issued on February 7, 2001 and amended on November 2, 2005; and distribution of the estate of the deceased in terms of paragraph 3 of the supporting affidavit of Jeremy Kamathi Kairanya.
3. In his supporting affidavit, Jeremy Kamathi Kairanya avers that the rectification of the grant will conform with the orders/ruling of this court of February 25, 2022.
4. Mary Karimi Kirimi swore a replying affidavit on April 4, 2022 accusing Jeremy Kamathi Kairanya of acting dishonestly, illegally and unlawfully by re-distributing the share of her deceased husband. She avers that after the amendment of the certificate of confirmation of grant dated November 2, 2005, the beneficiaries took their respective shares and had them registered in their names and some of them have even disposed of some properties. She avers that the proposed further rectification of the grant goes against the order of the court of February 25, 2022. She acknowledges that although the family members met on December 4, 2021, the beneficiaries did not agree to re-distribute the estate of the deceased. She proposes that all the properties which were distributed to Kairanya Investment Ltd vide the amended certificate of confirmation of grant of November 2, 2005 and those other properties which were ordered by the court vide its ruling of February 25, 2022 be shared equally and equitably among all the beneficiaries without any discrimination. She accuses the administrators of failing to pay school fees for her children even after the court had ordered them to do so.

The 2nd Application

5. Mary Karimi Kirimi filed an application dated May 25, 2022 pursuant to Rules 49, 59(1), 60 and 73 of the *Probate and Administration Rules*, seeking a temporary stay of proceedings and/ or hearing of the application dated March 9, 2022 pending the hearing and determination of this application; valuation of all the properties in the name of Kairanya Investment Ltd, to enable equitable distribution thereof; and the costs of such valuation be paid from the rent which accrues from developed properties in the name of Kairanya Investment Ltd.
6. In her supporting affidavit sworn on even date, she contends that Plot No 315 situated at Kambi ya Juu in Isiolo Township should be included among the plots under Kairanya Investment Ltd for distribution. She is not agreeable to the mode of distribution proposed by Jeremy Kamathi as the same is discriminative against her. She wants a valuation of the properties under Kairanya Investment Ltd to be undertaken before the distribution to the beneficiaries can be done in order to ensure equal and/ or equitable distribution without any discrimination.
7. Jeremy Kamathi swore a replying affidavit on June 22, 2022 in opposition to the application. He avers that the issue of re-distribution was discussed during the family meeting held on December 4, 2021. He avers that Mary Karimi is in the adventure of disowning the family meeting using a backdoor. He avers that the redistribution is necessary to cater for beneficiaries who did not get a share earlier like the 1st-5th Interested Parties.
8. Ezra Muguna Kairanya swore a replying affidavit on June 28, 2022 vehemently opposing the application of May 25, 2021, and prayed for its dismissal.
9. Mary Karimi swore further supporting and supplementary affidavits on July 18, 2022 in support of her application.



10. Martin Kairanya and the 1st-5th Interested Parties swore affidavits of protest on distribution on October 25, 2022 and June 28, 2022. Martin Kairanya believes that the import of the ruling of February 25, 2022 was to re-distribute the estate so as include the 5th Interested Party and the properties under Kairanya Investment Ltd. He fully supports the mode of distribution proposed by the 1st-5th Interested Parties. The 1st-5th Interested Parties aver a valuation has already been done on the commercial properties, and the re-distribution is being sought to cater for some of the beneficiaries who were completely left out while others were given tokens. They make their proposal on distribution with regard being given to the developments made by some of the beneficiaries of the deceased especially on Kithoka land.
11. Mary Karimi swore a replying affidavit on September 23, 2022 in response to the 1st-5th Interested Parties affidavit of protest.

Submissions

12. Mary Karimi submitted that she would entirely be relying on the documents she had filed together with the annexures thereon. She prayed for the application dated May 25, 2022 to be allowed and the one dated March 9, 2022 to be dismissed with costs.
13. Martin Kairanya submitted that for a reasonable and equitable distribution to be achieved, all the properties of the deceased must be looked into and re-distributed, and cited the Court of Appeal case of *Justus Thiora Kiugu & 4 Others v Joyce Nkatha Kiugu & Anor* (2015) eKLR. He submitted that a valuation of the prime properties located within Meru Municipality has already been undertaken and the other properties do not need to be valued. He urged that staying the proceedings herein would be a draconian step that will keep the estate pending in court for a long time, and cited *Kenya Wildlife Service v James Mutembei* (2019) eKLR. He urged the court to dismiss the application dated May 25, 2022 and distribute the estate as proposed by the 1st-5th Interested Parties in their mode of distribution dated June 28, 2022.
14. The Petitioners urged that the court orders of February 25, 2022 were issued on the strength of the family meeting of December 4, 2021, and cited *Re Estate of Johnson Omae Aburi (Deceased)* (2022) eKLR. They applauded the court for making a sound decision based on the collective views of the parties concerned as agreed in the said family meeting. They urged that adopting the mode of distribution proposed by the Interested Parties would open floodgates of litigation and stall this matter, as the beneficiaries have taken possession of their respective inheritance and settled, and cited *Re Estate of Alice Mumbua Mutua (Deceased)* (2017) eKLR. They submitted that their mode of distribution has factored in all the personal development and improvements of the parties herein and those of 3rd parties who have acquired legal rights on some of the properties legally sold to them. They urged the court to reject the valuation report filed by the Interested Parties, as it was done in bad faith and it was skewed and ill advised by 3rd parties who are pulling strings with the Interested Parties in order to cause more problems to the family members. They prayed for the dismissal of the application dated May 25, 2022 and re-distribution of the estate as they have proposed.

Analysis and Determination

15. The court notes that the 2 applications are sides of the same coin, therefore a determination of one will definitely impact the other, and this court will start with the application dated March 9, 2022.
16. Rectification of a grant under Section 74 of the *Law of Succession Act* is in respect of errors and mis-descriptions only. That Section provides as follows: - “Errors in names and descriptions or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by



the court; and the grant of representation whether before or after confirmation, may be altered and amended accordingly.”

17. The effect of the further rectification of the grant sought by the Petitioners is to re-distribute properties held by the 6th Interested Party, as directed by the court vide its ruling of February 25, 2022. The court (P J Otieno J) in the said ruling rendered thus, “On the need to revert the property registered in favour of and held by the 6th Interested, there is no contention that the same revert to the estate. Only for the Laikipia property was there insufficient material on when it was transferred to the company and if they ever belonged to the deceased. The copies of green cards on record reveal that Land Parcel Nos Laikipia/Daiga Ethi Block 2/1455, 1459, 1463, 1476 and 1477 were as at August 23, 2010, and to date, owned by Kairanya Investments Limited, without more details on how the company acquired same. However, by the resolution of the family meeting held on the December 4, 2021, it was agreed that the same go to the interested parties. I infer a concession by the administrator, the company and the family in general that the said property and the commercial property indeed is due to the estate and ought to be reverted to the estate and made available for distribution. With such desire by the parties, which the court deems a realization that something untoward did take place, the court of justice cannot in fairness withhold such property from being reverted to the estate. It thus commends to me that the said property known as Land Parcel No.s Laikipia/Daiga Ethi Block 2/1455, 1459, 1463, 1476 and 1477 and Meru Municipality Block 11/9, 128, 197, 202, 119 and Plot No. 50 Gakoromone, be transferred by the 6th to the estate to enable the same be distributed in a fair and just manner to the beneficiaries....Having reverted the said assets to the estate for distribution afresh, it is in the interest of all concerned that the certificate of confirmation of grant be rectified. It is therefore directed that that the administrators file and serve an application for rectification along the lines disclosed in the exhibited minutes of the family meeting...Upon service of that application, any beneficiary who shall be of contrary opinion to the proposed distribution shall file affidavits giving own proposals.”
18. The court *vide* its ruling of February 25, 2022 was clear that only the assets held by the 6th Interested Party were due for distribution, and not the entire estate of the deceased. The proposals made during the family meeting of December 4, 2021 touch on the entire estate and not just the properties held by the 6th Interested Party, which the court had ordered that they revert to the estate.
19. This court will not allow a re-distribution of the estate of the deceased which takes away from certain beneficiaries properties legally given to them by the Court by the Amended Certificate of Confirmation of Grant rectified on November 2, 2005.
20. The court will only focus on the proposals made on the distribution of properties which were held by the 6th Interested Party.
21. The beneficiaries during the family meeting of December 4, 2021 proposed Plot No BII/128 to go equally to Mwenda Kairanya and Jeremiah Kamathi; Plot No BII/9 to go to Mrs Kirimi - 1/2 acre then the other 1/2 acre to be shared by Susan Kairanya, Catherine Nkatha, Jane Kairanya and Rose Kaburu; Plot No BII/202 to be shared equally by Ezra M. Kairanya and Caroline Makandi; Plot No BII/103 to go wholly to Martin Kairanya; Plot No 50 Gakoromone be given to the daughters of the deceased; Plot No 2890/119 to go wholly to Mrs Karimi; and Plot No 2890/62 to go jointly to Mwenda and Jeremiah.
22. Since the beneficiaries did not propose how Land Parcel Nos Laikipia/Daiga ethi blocK 2/1455, 1459, 1463, 1476 and 1477, which were also owned by the 6th Interested Party, should to be shared out, this court directs that the same be distributed equally among all the beneficiaries of the deceased.



23. Having determined the application of March 9, 2022, it follows that the application of May 25, 2022 fails. The Court considers that the resolution of these two applications finally closes the administration and distribution of the Estate herein.

Orders

24. Accordingly, for the reasons set out above, the Court makes the following orders:

1. The application dated March 9, 2022 is allowed upon the following terms:
 - a. The properties which were previously owned by the 6th Interested Party, but are now in the name of the deceased, will be distributed as proposed by the family members during the meeting held on December 4, 2021, as follows:
 - i. Plot No BII/128 to Mwenda Kairanya and Jeremiah Kamathi in equal shares;
 - ii. Plot No BII/9 ½ acre to Mrs Kirimi - 1/2 acre then the other ½ acre to be shared by Susan Kairanya, Catherine Nkatha, Jane Kairanya and Rose Kaburu;
 - iii. Plot No BII/202 to Ezra M Kairanya and Caroline Makandi in equal shares;
 - iv. Plot No BII/103 to Martin Kairanya wholly;
 - v. Plot No 50 Gakoromone to the daughters of the deceased;
 - vi. Plot No 2890/119 to Mrs Karimi wholly;
 - vii. Plot No 2890/62 to go jointly to Mwenda and Jeremiah;
 - b. The proposals on how to re-distribute the other properties are declined.
 - c. Land Parcel Nos Laikipia/Daiga Ethi Block 2/1455, 1459, 1463, 1476 and 1477 shall go to all the beneficiaries in equal shares.
2. The application dated May 25, 2021 is dismissed.
3. There shall be no order as to costs.
4. File closed.

Order accordingly.

DATED AND DELIVERED ON THIS 23RD DAY OF MARCH, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr, Kamunde Advocate for the Petitioners/Applicants in Application dated 9/3/2022.

Mr. Nyamu Nyaga Advocate for Mary Kirimi Applicant in Application dated 25/5/2022.

Mr. Mwirigi K. Advocate for Martin Kairanya/Applicant.

Mr. Gichunge Advocate for 1-5 Interested Parties.

Mr. Murango Mwenda Advocate for the 6th Interested Party.

