



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**In re Estate of Muroko Kimitu (Deceased) (Succession Cause
34 of 2017) [2023] KEHC 3227 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 34 OF 2017**

RM MWONGO, J

APRIL 20, 2023

(FORMERLY NYERI SUCC NO 1064/2009)

**IN THE MATTER OF THE ESTATE OF THE LATE MUROKO KIMITU
ALIAS DOUGLAS MUROKO KIMITO (DECEASED)**

BETWEEN

NICORETA WANJIKU MURAGE APPLICANT

AND

AULERIA NJOKI MUROKO RESPONDENT

RULING

Application

1. On February 18, 2021, the applicant Nicoreta Wanjiku Murage filed a Summons for revocation of grant herein, dated February 15, 2021. The application sought to revoke the grant issued and confirmed to Josephine Ikuu Muroko alias Ikuu Muroko, who is deceased. It further sought that Aurelia Njoki Muroko be made the administrator of the deceased's estate. In her supporting affidavit, she stated that she was a daughter of the deceased and proposed the distribution mode.
2. The respondent, Auleria Njoki Muroko, filed a replying affidavit in which she asserted that she was the daughter of the deceased, and that the letters of administration should be issued to her. She also indicated her proposed distribution mode for the deceased's property.
3. The application for revocation was amended by the applicant, by an Amended Summons for revocation dated September 24, 2021, and filed on September 27, 2021. This is the application now under consideration. It indicates the applicant and the respondent as joint applicants, and seeks that the applicants be made the joint administrators. However, the amended application is not signed by Auleria Njoki Muroko.



4. In the supporting affidavit to the amended Summons, the applicant states that she wants to complete the administration of the estate together with Auleria, her step sister. She has also attached a Limited Grant *Ad Litem* issued by the High Court at Nyeri on May 19, 2017, by which Nicoreta is appointed to substitute Josephine Ikuu Muroko alias Ikuu Muroko as administrator of the estate of the deceased herein.
5. Clearly, from the fact that the applicant seeks joint administration with the respondent, it is evident that the issue of revocation is now settled and that both the applicant and the respondent should be appointed as the joint administrators of the deceased's estate.
6. In light of the foregoing, it is ordered that the applicant and the respondent be, and are hereby, appointed as joint administrators of the estate of the late Muroko Kimitu alias Douglas Muroko Kimito
7. The only pending issue now is the is the mode of distribution of the deceased's property.
8. There is a contention that the deceased died testate, having written a will. However, when the court inquired as to its whereabouts, none of the parties could clearly ascertain that there was such a will, and none was produced for validation. The court warned that without formal production of a Will instrument, the matter would proceed by way of intestate succession, as the grant previously issued was, in any case, an intestate grant.
9. It is not in dispute that the deceased was the owner of LR No Ngariama/ Thirikwa/20. It is however not clear what the actual size of the property is.
10. Documents in the file show the following with regard to the land. A Mutation Form dated 25/3/1987 and filed in court on January 17, 2018, shows the land as comprising 3.96 Hectares (12.988 Acres). The Mutation form is signed in the name of the deceased. Three parcels of land are carved out of the deceased's land with new proposed parcel numbers indicated as: No 878 (0.72 hectares); No 879 (1.62 hectares) and No 880 (1.62 hectares), making a total of 3.96 hectares.
11. Although the Mutation Form was signed by the Director of Survey and forwarded by the Land Registrar, Kirinyaga, to the District Surveyor on 10/5/1988, it appears that the actual subdivision of the deceased's land was not formally effected.
12. A Search dated November 22, 2007, filed on 6/12/2007 in the Principal Magistrates registry where the succession file initially commenced, also indicates that the deceased's same property Ngariama/ Thirikwa/20 measures 3.96 hectares or 12.988 Acres.
13. No other documentary evidence is availed to ascertain the size of the deceased's property.
14. The parties are not agreed on the mode of distribution. Nicoreta in her supporting affidavit filed on 27/9/2021 proposes that the land be shared in the ratio 4:4:2 as follows:
 - i. James Nyaga Muroko, Esther Wambogo Muroko; Stephen Muchira Muroko and Charles Njeru Murokoto take 4 acres jointly;
 - ii. Mugwimi Muroko, Joseph Njagi Muroko Kibubo Muroko and Auleria Njoki Muroko..... to take 4 acres jointly;
 - iii. Nicoreta Wanjiru Murage, Lydia Ruguru Muroko, Irene Mutiti Muroko, Florence Wawira Muroko, Kujeta Wanjiru Muroko and Agnes Wairimu Muroko to share 1.8 Acres.

It is noted that this proposal accounts for only ten (10) acres of the deceased's land.



15. Auleria Muroko in her supporting affidavit filed on 6/8/2021 proposes that the land be subdivided into two as per the two wives' households and be distributed as follows:
 - i. Kibubo Muroko, Joseph Njagi Muroko, Anthony Mugwimi Muroko, 's Wanjiru, Agnes Wairimu and Auleria Njoki Muroko to take 5 acres jointly
 - ii. James Nyaga Muroko, Stephen Muuroko, Charles Njeru Muroko, Esther Wambogo Muroko, Florence Wawira Muroko, Irene Mutito Muroko, Nicoleta Wanjiru Muroko and Lydia Ruguru Muroko to take 5 acres jointly

As before, this proposal takes into account of only ten (10) acres of deceased's land.

16. In addition, there are statements on file by Lawrence Kangi Njagi (deceased's step brother), Muchira Muroko (deceased's son), and Lydia Ruguru Muroko, all supporting a distribution in the ratio of 4 Acres: 4 Acres in favour of the deceased's children; and 2 Acres to Josephine Ikuu Muroko's children, being the share she was holding. Again, these statements take into account only ten (10) acres of the deceased's land.

Conclusion

17. All the proposals made by the parties for distribution of the deceased's land appear to account for only ten (10) of the 12.988 acres of the deceased's land. They are therefore unfeasible.
18. Accordingly, in the absence of clarity as to the size of the deceased's parcel of land, and given that the full extent of the beneficiaries of the estate was not clearly specified, the Court declines to make any order as to distribution.
19. Instead, the following orders are deemed appropriate in the circumstances:
 - a. That Nicoreta Wanjiku Murage and Auleria Njoki Muroko be, and are hereby, appointed as joint administrators of the estate of the late Muroko Kimitu alias Douglas Muroko Kimito
 - b. That the joint administrators herein appointed shall obtain the grant in their names forthwith; and that they shall thereafter file a summons for confirmation, within the next seventy (70) days from the date herein.
 - c. In the meantime, the parties and beneficiaries are directed to proceed to Court Annexed Mediation, and to engage in good faith negotiations with a view to amicable agreement on the mode of distribution of the deceased's property.
 - d. Prior to such mediation, the administrators shall within ten (10) days of the date hereof ascertain the acreage of the deceased's property by way of an official search including whether any subdivisions were filed at the lands office or are registered.
 - e. The report of the Mediator shall be filed immediately upon agreement being reached, and in any event, within sixty (60) days of the reference to mediation, whether or not agreement is achieved.
20. This matter shall be mentioned in court within ninety (90) days on a date to be fixed in court or in the registry.
21. Orders accordingly.

DATED AT KERUGOYA THIS 20TH DAY OF APRIL, 2023

R. MWONGO



JUDGE

In the presence of:

Nicoreta Applicant Present in Person

Makazi for the Petitioner/Respondent

Auleria Njoki in Person

Murage, Court Assistant

