



In re Estate of Catherine Wanjiku Mureithi (Deceased) (Succession Cause 714 of 2012) [2023] KEHC 18461 (KLR) (Family) (19 May 2023) (Judgment)

Neutral citation: [2023] KEHC 18461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 714 OF 2012

MA ODERO, J

MAY 19, 2023

BETWEEN

EDWARD GITARI PETITIONER

AND

LUCY GLADWELL WAIRIMU OBJECTOR

JUDGMENT

1. Before this court for determination is the objection to confirmation of grant dated November 25, 2019 which objection was filed by Lucy Gladwell Wairimu a beneficiary of the estate of the deceased.
2. The respondent Edward Gitari Muriithi filed a Reply (which was not dated) opposing the objection. The court directed that the matter be canvassed by way of written submissions. The objector filed the written submissions dated November 30, 2022 whilst the administrator relied upon his written submissions dated December 1, 2022.

Background

3. The Succession Cause relates to the estate of the late Catherine Wanjiku Mureithi (hereinafter ‘the deceased’) who died intestate on September 26, 2009. A copy of the Death Certificate serial Number 121730 is annexed to the Petition for the Grant of Letters of Administration Intestate dated December 16, 2012.
4. The deceased was not married and had no biological children of her own. She was survived by her siblings who included:-
 - (i) Lucy Gladwell Wairimu - Sister
 - (ii) Edward Gitari - Brother



- (iii) Priscilla Waringa - Sister
 - (iv) Edith Mwangi - Sister
5. The estate of the deceased which was valued at Kshs.3,000,000 comprised the following assets:-
- ”(a) Limuru/Rironi/919-Kiambu
 - (b) Limuru/Rironi/918-Kiambu
 - (c) Greenfield, Harambee Co-operative Savings & Credit Society LTD.
 - (d) Plot No. A779-Nairobi
 - (e) Embakasi Plot No. 16 Masice Enterpirses Share Certificate No. 12xx
 - (f) Bank Balance Account No. 64628xxxxx-51013xxxxx, Commercial Bank of Africa
 - (g) Bank Balance Account No. 64628xxxxx-51013xxxxx Commercial Bank of Africa”
6. Following the demise of the deceased the objector herein Lucy Gladwell Wairimu applied for and obtained Grant of Letters of Administration Intestate which Grant was issued to her on June 13, 2013.
7. On May 10, 2017 the court ordered that the objector be removed as administrator of the estate on account of her failure to file Accounts. Edward Gitari was appointed as the new administrator of the Estate.
8. On May 27, 2019 the administrator filed a summons for Confirmation of Grant settling out the proposed mode of Distribution of the estate. The objector declined/refused to sign the consent to the summons for confirmation and instead filed this present objection.
9. The objector argues that the mode of distribution of the estate as proposed by the administrator contradicted a resolution reached by all family members at a meeting held on December 14, 2016.
10. Specifically the objector avers that it was agreed by all the beneficiaries that Plot No. Kayole No C3-204 be bequeathed to her to hold in trust for Anne Teresa Nyawiraa niece to the deceased. That further it was agreed that Embakasi Plot No. 16 Musice Enterprises would also devolved entirely to the objector.
11. The objector finally states that the entire family agreed that the remaining assets comprising the estate would be shared equally amongst the remaining beneficiaries.
12. In opposing the objection the administrator asserts that there was no agreement on distribution of the estate as alleged by the objector. He states that at December 14, 2016 the objector was still the administrator of the estate and if any agreement had been reached then she ought to have filed the same in court.
13. The administrator avers that the mode of distribution proposed by the objector is not equitable as she would stand to inherit 75% of the estate leaving the remaining three (3) beneficiaries to share the paltry remaining 25%. The administrator further avers that Anne Teresa Nyawira the deceased’s niece is not a beneficiary to the estate.
14. The administrator concludes that the mode of distribution proposed by the objector was rejected by the other family members. He states that the mode of distribution contained in the schedule to the summons for confirmation of Grant dated May 27, 2019 is the fairest way to distribute the estate. He urges the court to dismiss the objection and to confirm the Grant as prayed.



Analysis and Determination

15. I have carefully considered the objection filed in this matter, the Reply thereto as well as the written submissions filed by both parties. The only issue for determination is whether the objection filed by the objector ought to be allowed.
16. The objector claimed that the family held a meeting on December 14, 2016 at which it was agreed that Kayole Plot C3-204 would devolve to her to hold in trust for her daughter who is the niece of the deceased. She also claimed that Embakasi Plot No. 16 Musice Enterprises would entirely devolve to herself.
17. The objector has not produced as court any written evidence of this alleged resolution reached during the family meeting of December 14, 2016. No minutes of the said meeting have been annexed. As pointed out by the administrator on this date the objector was still the administrator of the estate and was presumably chairing the meeting. Why did she not keep a written record of the minutes and resolutions made at the said meeting as proof of what was agreed. I find no evidence to show that the alleged resolutions were reached at the family meeting.
17. The beneficiaries in this matter are all the siblings of the deceased. None of them ranks in priority over the other regarding distribution of this estate. The deceased did not leave a written or oral Will detailing how she wished her estate to be distributed.
18. I have perused the mode of distribution set out in the schedule to the summons for confirmation of Grant. That mode of distribution is in my view fair and equitable.
19. On the other hand the mode of distribution proposed by the objector gives to herself the bulk of the estate leaving a small portion to be shared amongst the remaining three (3) beneficiaries.
20. The objector justifies her proposal by claiming that she single handedly developed the Kayole property. Firstly no evidence has been adduced to prove this allegation. Secondly the issue of the objectors claim to this Kayole Plot was considered by my learned brother Hon. Justice William Musyoka in his ruling delivered on July 27, 2018. The Hon. Judge found that this Probate Court had no jurisdiction to determine the objector's claim to ownership of this Kayole Plot. She advised to pursue her claim in the Environment and Land Court.
22. In raising the issue once again through this objection the objector is inviting this court to rule on an issue which has already been ruled upon by a court of concurrent jurisdiction. I decline the invitation.
23. It is clear that the aim of the objector is to benefit herself and her own daughter to the detriment of the other beneficiaries.
24. I am of the view that the best course of action is to distribute the estate equally amongst all the siblings of the deceased. The objector has not shown any justification or grounds why she merits to inherit the bulk of the estate of the deceased.
25. In conclusion I find no merit in the objection dated November 25, 2019. I direct that the Grant issued to the administrator Edward Gitari Muriithi on May 10, 2017 be confirmed. I further direct that the estate be distributed in line with the schedule of Distribution ('A') annexed to the summons for confirmation of Grant dated May 27, 2019. This being a family matter I make no orders on costs.

DATED IN NAIROBI THIS 19TH DAY OF MAY, 2023.

MAUREEN A. ODERO



JUDGE

