



In re Estate of Kabugi Mathenge alias Kigweru Mathenge (Deceased) (Succession Cause 506 of 1999) [2023] KEHC 3916 (KLR) (4 May 2023) (Ruling)

Neutral citation: [2023] KEHC 3916 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 506 OF 1999
FN MUCHEMI, J
MAY 4, 2023
IN THE MATTER OF THE ESTATE OF KABUGI
MATHENGE ALIAS KIGWERU MATHENGE (DECEASED)**

BETWEEN

BENSON MWANGI MATHENGE PETITIONER

AND

JAMES WERU MIRAURI 1ST OBJECTOR

PAUL MAINA NGATIA 2ND OBJECTOR

RULING

Brief facts

1. The background facts are that Benson Mwangi Mathenge the petitioner filed a petition for grant of letters of administration intestate in Nyeri Principal Magistrate's Court Succession Cause No 173 of 1993 on July 26, 1993 in his capacity as the only son of the deceased.
2. On October 26, 2018, the 1st objector filed an Objection to the making of grant of representation to the petitioner and filed a petition by way of cross petition on November 13, 2018 in his capacity as an interested party having purchased 1.3 acres out of L.R No Ruguru/Kiamariga/1435 from the deceased during his lifetime.
3. The 2nd Objector filed his objection by way of cross-petition on August 16, 1993 claiming to have bought 1.0 acre from out of deceased's land LR. No Ruguru/Kiamariga/1435 for Kshs50,000 on 26/08/1992.
4. The 1st objection was heard by way of viva voce evidence. The 2nd objector did not pursue his objection to the stage of hearing.



The 1st Objector's Case

5. The 1st objector testified that the deceased suffered from acute diabetes and became sickly and that he had leased the land of the deceased from 1984-1990. Later in 1992, the deceased needed money to pay for his medical bills and approached the 1st objector to purchase one acre of the land for a consideration of Kshs50,000/- to assist the deceased in meeting his medical expenses. He first purchased 0.3 acres of the land and paid deceased a sum of Kshs 15,000/-. The parties reduced their land sale agreement into writing on January 21, 1992 and May 19, 1992 which were produced in court as evidence.
6. It was the 1st objector's case that the deceased used to live alone and that the wife of the 1st objector used to assist in giving deceased insulin shots. The deceased had no family of his own at the material time. The 1st objector further testified that he did not know how the petitioner is related to the deceased, if at all.
7. The 1st objector stated that he has been in occupation of the two portions of land which sum up to 1.3 acres and he has planted coffee and macadamia trees therein.
8. The 1st objector further testified that the deceased had a brother, namely Joseph Njaci Mathenge and the two inherited two parcels of land from their father being L.R No Ruguru/Kiamariga/314 and Plot No Magutu/Gaikuyu/78. Joseph Njaci surrendered his share in LR No 1435 and went to occupy Land Parcel No Magutu/Gaikuyu/78. The exchange therefore made the deceased the sole proprietor of LR No Ruguru/Kiamariga/1435. The 1st objector therefore prays to the court to grant him the letters of administration intestate to him.

The Law

9. The procedure for objection is provided for in Sections 67, 68 and 69 of the *Law of Succession Act*. Section 68 of the Act provides:-
 - (1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.
 - (2) Where notice of objection has been lodged under sub section (1), the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period.
10. Section 69 of the *Act* further stipulates that:-
 1. Where a notice of objection has been lodged under sub section (1) of section 68, or no answer or no cross-application has been filed as required under sub section (2) of that section, a grant may be made in accordance with the original application.
 2. Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.
11. The deceased herein died on October 6, 1992 and the petitioner herein petitioned for letters of administration intestate on July 26, 1993. He made his application in his capacity as the deceased's son and listed the following as the persons surviving the deceased.
 - a. Benson Mwangi Mathenge – son
 - b. Pauline Mumbi w/o Maina – daughter



- c. Jesinta Wanjiru – daughter
- d. Mary Gathoni – wife.
12. Initially, the two objectors filed separate Notices of Objection in their capacity as purchasers for value. The 2nd objector stated that he entered into an agreement to purchase 1 acre out of land parcel LR No Ruguru/Kiamariga/1435 at a consideration of Kshs 50,000/- on 26th August 1992. The 2nd objector said he paid Kshs 5,000/- on the same day and agreed to pay the balance within three months. However, the 2nd objector stated in his affidavit that he never completed the purchase price from the date of the agreement, August 26, 1992.
13. The 1st objector filed his objection and cross application and set it down for hearing. He stated that it became impossible to trace the petitioner and as such he applied to have his pleadings served upon the petitioner by way of substituted service which the court allowed. The objection proceeded to be heard in the absence of the petitioner who did not attend court even after being served with the hearing notices. He testified that the deceased had no family of his own and he was not aware of the relationship between the petitioner and the deceased. The 1st objector led evidence that he entered into two sale agreements to purchase a portion of land 1.3 acres out of LR No Ruguru/Kiamariga/1435 in 1992. He produced two agreements dated January 21, 1992 and May 19, 1992 to support his claim. I have perused the two sale agreements and noted that the deceased and the 1st objector entered into a sale agreement to purchase one acre out of LR No Ruguru/Kiamariga/1435 for a consideration of Kshs 50,000/-. The agreement further indicates that the 1st objector paid the purchase price in full and the deceased acknowledged he same. The 2nd sale agreement is in respect of 0.3 acres out of the same property and the 1st objector paid Kshs 5,300/- to the deceased and agreed to continue paying the deceased the balance until the said sum of Kshs 15,000/- was paid in full. The agreement indicates that he would pay the balance of the purchase price by paying for the deceased's subsistence and medicine. This supports the contention by the 1st objector that the deceased was diabetic and sickly and that he needed funds to meet his medical bills. I have perused the court record and noted that the certificate of death indicates that the deceased's cause of death was diabetes due to hypoglycaemia which corroborates the evidence of the 1st objector on the deceased's need of funds for treatment. The petitioner was served with the objection and the hearing notices of the objection but failed to attend court or to file a response.
14. The 2nd objector did not pursue his objection and was not heard in court. The objection required the 2nd objector to attend court and give evidence on how he purchased the land as claimed.
15. It is my considered view that the 1st objector's objection and cross-petition were proved and are successful as against the petition of Benson Mwangi Mathenge to defend his interests in the estate
16. The 1st objector is hereby appointed the administrator of the deceased's estate.
17. Due to the age of this cause, the court directs that Summons for Confirmation of grant be filed within 30 days and ought to take into account the interests of the beneficiaries named in the petition in the distribution.
18. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 4TH DAY OF MAY, 2023.

F. MUCHEMI

JUDGE



Ruling delivered through videolink this 4th day of May, 2023

