



REPUBLIC OF KENYA



**In re Estate of James Njuguna Kiongo (Deceased) (Succession Cause 1892 of 1993) [2023] KEHC 21144 (KLR) (Family) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21144 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1892 OF 1993  
MA ODERO, J  
JULY 21, 2023  
IN THE MATTER OF THE ESTATE OF JAMES NJUGUNA KIONGO (DECEASED)**

**BETWEEN**

**HANNAH WANJIKU NJUGUNA ..... APPLICANT**

**AND**

**ELUID MWANGI KIONGO ..... 1<sup>ST</sup> RESPONDENT**

**DAVID KINYANJUI NJUGUNA "A" ..... 2<sup>ND</sup> RESPONDENT**

**NJOKI KIONGO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this Court for determination are the two applications dated October 7, 2020 and March 8, 2021.

(i) Summons dated October 7, 2020 was filed by the Applicant Hannah Wanjiku Njuguna seeking the following orders:-

- “ 1. Spent.
2. That the Honourable court be pleased to compel the administrators to transfer the properties to the beneficiaries as per the amended certificate of confirmation dated October 1, 2021.
3. That in the alternative the administrators be substituted with Hannah Wanjiku Njuguna and Monica Nduta.



4. That this court do direct that the amount to be paid before or on October 13, 2020 by Kenya National Highways Authority (KENHA) be paid to the beneficiaries equally and directly to them.
  5. That this Honourable court be pleased to order that any property sold from the estate be restored back to the estate.
  6. Costs of this application be borne by the Respondents.
2. The summons was premised upon Section 82, 83, 95 of the *Law of Succession Act* (Cap 160), Rule 44 and Rule 73 of the *Probate and Administration Rules* and is supported by the sworn affidavit of even date sworn by the Applicant.
  3. The Respondent David Kinyanjui Njuguna “A” opposed the application through an undated Replying Affidavit.
    - (ii) summons dated May 7, 2021 filed by the same Applicant Hannah Wanjiku Njuguna seeking the following orders:-
      - “ 1. Spent.
      2. That this Honourable Court be pleased to direct that the amount to be Kenya National Highways Authority (KENHA) be paid to the beneficiaries equally and directly to them as the Respondents have not been acting as personal representatives but rather squanders the estates to the detriment of all other beneficiaries.
      3. Costs of this Application be borne by the Respondents.”
  4. The summons was premised upon Section 82, 83, 95 of the *Law of Succession Act* (Cap 160), Rule 44 and Rule 73 of the *Probate and Administration Rules* and is supported by the sworn affidavit of even date sworn by Hannah Wanjiku Njuguna.
  5. The Applications which sought similar orders were canvassed together by way of written submissions. The Applicant did not file any written submissions whilst the 2<sup>nd</sup> Respondent relied upon his written submissions dated June 21, 2022.

## **Background**

6. This Succession Cause relates to the estate of the late James Njuguna Kiongo (Hereinafter ‘the Deceased’) who died intestate on February 26, 1993. The Deceased was survived by five (5) wives and thirty-one (31) children and his estate comprised of several properties.
7. Following the demise of the Deceased Grant of letters of Administration Intestate was on June 4, 2008 issued to Eluid Mwaniki Njuguna, Joseph Kiongo Njuguna and David Kinyanjui Njuguna in their capacity as sons of the Deceased.
8. Thereafter Eunice Njoki Kiongo filed an application seeking to be appointed as a Co-Administrator of the Estate on the grounds that her house had not been represented in the original Grant. The Court then issued another Grant on February 25, 2009 which named Eluid Mwaniki Njuguna, David Kinyanjui Njuguna “A” and David Kinyanjui Njuguna “B” and Eunice Njoki Kiongo as the Administrator of the estate.



9. The Grant was duly confirmed on April 12, 2011 and amended on October 1, 2012. To date the estate has not been fully distributed.
10. The Applicant Hannah Wanjiku Njuguna who is a daughter of the Deceased and is one of the beneficiaries of the estate of the Deceased has filed the two applications seeking orders to compel the Administrators of the Estate to complete the transfer of properties to all the beneficiaries in accordance with the Amended certificate of confirmed Grant dated October 1, 2012.
11. The Applicant accuses the Administrators having failed to act to distribute the estate in line with the confirmed Grant and that the Administrators have abused their powers by selling off estate property and have caused inordinate delay in the distribution of the estate.
12. The Applicant avers that some of the estate properties have been identified and marked for compulsory acquisition by the Kenya National Highways Authority (KENHA). She is apprehensive that any compensation due to be paid in respect of the identified parcels of land will be paid to the Administrators instead of the individual owners of the identified parcels of land.
13. The Applicant alleges that the inordinate delay in distributing the estate is a ploy by the Administrators to disinherit some of the beneficiaries. She prays that any property sold from the estate be restored back to the estate and finally prays that herself and Monica Nduta be substituted to replace the current Administrators of the estate.
14. As stated earlier the application was opposed.

### **Analysis and Determination**

15. I have carefully considered the two applications dated October 7, 2020 and May 7, 2021, the Reply filed thereto as well as the written submissions on record. The following are the issues which arise for determination:-
  - (a) Whether the administrators should be substituted with Hannah Wanjiku Njuguna and Monica Nduta.
  - (b) Whether there is money from Kenya National Highways Authority (KENHA) that should be distributed between the beneficiaries.

#### **(i) Substitution of the Administrators**

16. The Applicant has prayed that the current Administrators of the estate be removed and be replaced by herself and Monica Nduta. Effectively therefore the Applicant is seeking to have the Grant issued to the current Administrators revoked.
17. The grounds upon which a grant may be revoked are provided for by Section 76 of the [\*law of Succession Act\*](#), Cap 160 laws of Kenya. In order to have the Grant revoked the Applicant must prove any one of the grounds contained in Section 76.
18. The Applicant has listed a series of allegations against the Administrators. She accuses them of inordinate delay in distributing the estate, selling off estate property to third parties and abusing their position of trust as Administrators.
19. In his part the 2<sup>nd</sup> Respondent denies all the allegations made against the Administrators. He claims that to-date 96% of the estate has been distributed.



20. It is trite law that he who alleges must prove. The Applicant claims that estate property has been sold to third parties. However, she has not identified which properties of the estate have been so sold. The allegation of abuse of their position of trust has also not been proved.
21. All in all I find that no sufficient material has been placed before this court to warrant revocation of the Grant.
22. The Applicant has prayed to have herself and Monica Nduta appointed to replace the current Administrators. Such substitution would require the consent of all the beneficiaries. No such consent signed by all the beneficiaries has been annexed to the application. On the whole I find no merit in this prayer and the same is hereby dismissed.
23. Having said that I do note that this Grant was confirmed way back in 2011 and was rectified in October 2012. To-date more than ten (10) years down the line the estate has not been fully distributed. In my view there has been laxity on the part of the Administrators. No reason has been advanced for this delay in finalizing the estate. Accordingly, I direct the Administrators to conclude distribution of the estate within Ninety (90) days.

**(b) Kenya National Highways Authority (KENHA) compensation**

24. It is quite obvious that the bone of contention and the main reason for the filing of these two applications is the identification of some of the estate property for compulsory acquisition by the government and the likelihood that compensation will be paid in respects of those properties. The Applicant is apprehensive that any compensation due will be paid to the Administrators instead of the individual beneficiaries.
25. The 2<sup>nd</sup> Respondent insists that the properties identified by KENHA have already been allocated to specific beneficiaries and that KENHA is dealing with the individual beneficiaries and not with the Administrators of estate.
26. Once again no sufficient material on the way of documents and/or letters from KENHA have been annexed by the Applicant to prove her allegations.
27. There is no proof that KENHA intends to pay any compensation to the Administrators.
28. Further the Applicant has not identified the names of those beneficiaries whose properties have been identified for compensation. I find no merit in the prayer (4) of the application.
29. Section 47 of the *Law of Succession Act* vests court with wide discretion in granting protective powers of purposes of safeguarding the estate of a deceased person. It provides:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
30. Likewise, Rule 73 of the *Probate and Administration Rules* provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”



**Conclusion**

31. Finally based on the foregoing I find no merit in the two applications filed by the Applicant. The court now makes the following orders:-

- (1) The summons dated October 7, 2020 and May 7, 2021 are both dismissed in their entirety.
- (2) The Administrators are ordered to within Ninety (90) days to complete distribution of the estate and transfer of all assets in compliance with the rectified Certificate of Confirmation dated October 1, 2012.
- (3) This being a family matter each side will pay their own costs.

**DATED IN NAIROBI THIS 21<sup>ST</sup> DAY OF JULY, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

