



REPUBLIC OF KENYA



In re Estate of Wilson Karanja Muriuri (Deceased) (Succession Cause 32 of 2017) [2023] KEHC 20037 (KLR) (13 July 2023) (Judgment)

Neutral citation: [2023] KEHC 20037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE 32 OF 2017
CM KARIUKI, J
JULY 13, 2023**

BETWEEN

MARGARET MUGURE 1ST APPLICANT

EUNICE WAMBUI 2ND APPLICANT

AND

JOSHUA THUO RESPONDENT

JUDGMENT

1) The court is called upon to determine two applications filed by the parties. The first application is a summons brought under Certificate of Urgency dated August 30, 2022 pursuant to sections 42 & 74 of the *Law of Succession Act* cap 160 of the Laws of Kenya and Rules 49, 59, and 73 of the *Probate and Administration Rules* and article 159 of the *Constitution* and other enabling provisions of the law, by which the applicants seek:-

- i. Spent.
- ii. Spent.
- iii. That the honorable court be pleased to issue an order directing and/or decreeing that the eucalyptus and cypress standing on the parcel of LR Nyandarua/Ol Kalou West/151 be sold, and the proceeds therefrom be deposited into a bank account held jointly by the advocate on record for the Applicants and the advocate for the Respondents (for the estate of the deceased).
- iv. That the honorable court be pleased to issue an order directing the release of, by the respective banks, the monies held in Equity Bank Account No. 06XXXX and Barclays Bank Account No. 35XXXX into a bank account held



jointly by the advocate on record for the Applicants and the advocate for the respondents (for the estate of the deceased).

- v. That the honorable court be pleased to issue an order that the monies realized from the sale of the trees and the accounts listed in prayer four above be applied towards meeting the costs associated with:-
 - vi. Subdivision and processing of titles, for all the beneficiaries, with respect to the parcel of land known as LR. Nyandarua/ Ol Kalou West/151.
 - vii. Valuate and/or subdivision and transfers to the beneficiaries of parcels of land LR No.s: Nyandarua/Ol Kalou Salient/1775, Nyandarua/Ol Kalou Salient/1774, Nyandarua/Ol Kalou Central/5291 and Nyandarua/Ndemi/ 1712 including the Temp Kiosk at Captain; and
 - viii. The legal costs associated with representations of the parties upon taxation of the same.
 - ix. That in view of prayers 3, 4, 5 above, the honourable court be pleased to issue an order directing that balance of monies remaining be shared equally amongst all the beneficiaries of the estate of the deceased.
 - x. That the honourable court be pleased to issue an order, directing the government valuer, Nyandarua County to undertake a valuation of the properties and to deposit the valuation report of the court: LR No.s: Nyandarua/Ol Kalou Salient/1775, Nyandarua/Ol Kalou Salient/1774, Nyandarua/Ol Kalou Central/5291 and Nyandarua/Ndemi/ 1712 including the Temp Kiosk at Captain for further directions and/or orders on the sharing of the said properties.
- 2) The applicants relied on the grounds on the face of the application and the supporting affidavit of Margaret Mugure Karanja dated August 30, 2022. The gist of it is that the certificate of confirmation of grant for the estate of deceased was issued on the February 4, 2021 with the implication that the estate of the deceased is to be shared equally amongst all the beneficiaries of the estate.
 - 3) Accordingly, the applicants submitted that the deceased's assets should be valued and subdivided equally amongst all the beneficiaries, including the eucalyptus and cypress trees standing on Nyandarua/Ol Kalou West 151 and the parcel of land itself, LR No.s: Nyandarua/Ol Kalou Salient/1775, Nyandarua/Ol Kalou Salient/1774, Nyandarua/Ol Kalou Central/5291 and Nyandarua/Ndemi/ 1712, the Temp Kiosk at Captain and monies in the bank.
 - 4) In opposition to the said application, the respondent filed a replying affidavit dated October 26, 2022.
 - 5) The second application, dated October 7, 2022, was filed by the Respondent brought pursuant to section 47 of the *Law of Succession Act* and all other enabling provisions of the law and seeks that:-
 - i. Spent.
 - ii. The court be pleased to restrain the Respondents from disposing and/or selling any part of the estate.
 - iii. That the court be pleased to order and or direct the Applicants to be involved in the subdivision and distribution of the estate as ordered by the court on 4th February 2021.



- iv. That the costs of this application be provided for.
- v. Consequently, the Respondent controverted the application vide the replying affidavit deponed by Margaret Mugure dated 6th February 2023.

Applicants' Submissions

- 6) The applicants submitted that the application dated August 30, 2022 is premised on the facts that following the issuance of the certificate of confirmation of grant dated February 4, 2021 to the respondent, he has failed and/or refused to administer the estate to the detriment of the applicants. That to further frustrate the applicants, the respondent in connivance with one of the beneficiaries lodged an unsound application of summons for revocation or annulment of grant dated November 21, 2020, which was dismissed.
- 7) They asserted that the respondent in connivance with some of the beneficiaries disposed assets of the estate of the deceased being mature eucalyptus and cypress trees and pocketed the proceeds to the exclusion of the beneficiaries. That the sale is a clear act of intermeddling with the estate. That in consequence of the respondent's ineptitude to transmit the estate to the beneficiaries of the estate, it is clear that the estate will keep on wasting as the respondent and a few beneficiaries continued to benefit from unlawfully disposing off assets of the estate.
- 8) It was contended that the respondent has completely refused to execute the terms of judgement delivered on July 19, 2021 despite several requests and demands to do so. That the Applicant was forced to file the application dated July 26, 2021 seeking for orders to compel the Respondent to complete the administration and it also sought that this court do order the government surveyor to carry out the subdivisions of the parcels of land, which orders granted by this court on November 22, 2021. After these orders, the respondent started interfering with the estate and even removing the beacons put by the government surveyor.
- 9) Further, the applicants stated that the respondent was present during the exercise and, therefore, they should not complain, in any case, if they had complied with the orders of the court by allowing the smooth distribution of the estate, this matter would have been concluded along time ago.
- 10) Reliance was placed on section 83 (g) of the Law of Succession Act, In re Estate of George Gikundi (Deceased) [2021] eKLR
- 11) The applicants submitted that the apprehension of the continued intermeddling by the respondent with the assets of the estate to the exclusion of the applicants and the fact that the respondent has dilly-dallied on the distribution process two years and two months post the certificate of confirmation of grant dated February 4, 2021, it is only fair that the assets vested in favour of all beneficiaries and the process are concluded without undue delays.
- 12) It was asserted that the position of a personal representative of an estate of a deceased person is deeply rooted on the basis of trust and goodwill. Where such is lacking, the court may invoke its inherent powers to advance justice to the beneficiaries. That in the present case, it is their proposal that the subdivision and issuance of title deeds process should continue when the estate holds enough money in Equity Bank Limited and Barclays Bank limited, which can be used to pay for the subdivision and processing of titles.
- 13) Reliance of placed on Rule 73 of the Probate and Administration Rules, sections 45 and 47 of the Law of Succession Act



- 14) On the application dated October 7, 2022 by the respondent, the applicants stated that the same is a big mockery to the present succession and an abuse of the court process. That they have remained willing to participate in the prompt distribution of the estate property bearing in mind that the respondent has in the past sought to disinherit the applicants, as evidenced by the proceedings before the court.
- 15) Further, the applicants submitted that they have tabled evidence proving that the respondent has colluded with some estate beneficiaries and began pocketing proceeds of the estate property, being eucalyptus and cypress trees. That the respondent is yet to file any inventory of the assets and liabilities of the estate and give an accurate account of all dealings in the estate property and that he has also failed without justification to distribute the estate to its lawful beneficiaries.
- 16) In conclusion, the applicants submitted that according to section 27 of the *Civil Procedure Act*, the respondent be condemned to pay for costs of the cause and interest both jointly and severally on any award that the court may make in favour of the Applicants.

Respondent's Submissions

- 17) The respondent submitted that it is not in dispute that this court rendered itself on February 4, 2021. In the confirmed grant, all the assets of the deceased were to be shared equally between all the beneficiaries. The dispute before this court is how the finalization of the distribution should be done.
- 18) It was stated that in the application dated August 30, 2022, which application appears as a review, the Applicants herein sought that the trees on parcel no. Nyandarua/Ol Kalou West 151 be sold, and the proceeds therein be utilized for various purposes, among other prayers. The applicants herein have yet to demonstrate that the other beneficiaries are incapable of meeting the costs of the finalization of the estate to warrant the orders sought.
- 19) The respondent submitted that the other beneficiaries oppose the proposal, who feel that they should be able to decide what should happen with the trees that fall within their shares. In the alternative, the rest of the beneficiaries are of the view that the trees be subdivided among the beneficiaries, who can thereafter decide what to do with their shares. All other beneficiaries have a right to say what should happen to their inheritance.
- 20) It was averred that the application dated August 30, 2022 is intended to prejudice the other beneficiaries. The applicants herein have yet to show the inability of the administrator to finalize the distribution of the estate, if anything, they were forcefully taking over the administration of the estate, thus interfering with the duties and responsibilities of the administration. That there is no application for revocation of grant.
- 21) The respondent pointed out that the evidence before this court shows that the applicants are attempting to manage the administration of the estate to the exclusion of other beneficiaries and, more importantly, the administrators who by law, have to finalize the estate. They are acting on their own motion despite there being no application for revocation of the grant. They have not been authorized by this court to act as administrators of the estate and have, on their own motion, taken up the responsibility of subdividing the properties without consulting the other beneficiaries.
- 22) The administrator avers that he is ready and willing to finalize the administration of the estate. The applicants have yet to allow him to do so, and the funds in question are to be shared equally between the beneficiaries equally, and that is a duty that the administrators can do without the involvement of the advocates herein. It was submitted that the application dated August 30, 2022 was



premature as the same was based on presumptions and not facts, and the Respondent urged the court to find as much.

- 23) Concerning the application dated October 7, 2022, the beneficiaries sought to be involved and an order prohibiting the two sisters from selling any portion of the properties. That these prayers are within their rights to be involved in the finalization of the estate.

Analysis and Determination

- 24) I have carefully considered both applications herein, the affidavits and the submissions filed as well as well as the authorities relied upon, and the main issue(s) that arise for determination is whether the applicants therein have made a case to warrant the grant of the orders they sought.
- 25) I will begin by considering the application dated August 30, 2022. In the instant application, the Applicant sought to have, among other prayers, the eucalyptus and cypress standing on the parcel of LR Nyandarua/Ol Kalou West/151 be sold. The proceeds therefrom be deposited into a bank account held jointly by the advocate on record for the Applicants and the advocate for the Respondents (for the estate of the deceased) and that the honorable court be pleased to issue an order directing the release of, by the respective banks, the monies held in Equity Bank Account No. 0620193641582 and Barclays Bank Account No. 3501080 & 027800360 into a bank account held jointly by the advocate on record for the applicants and the advocate for the respondents (for the estate of the deceased).
- 26) Additionally, the applicant prayed that the honorable court be pleased to issue an order that the monies realized from the sale of the trees and the accounts listed to be applied towards meeting the costs associated with; Subdivision and processing of titles, for all the beneficiaries, with respect to the parcel of land known as LR. Nyandarua/ Ol Kalou West/151; Valuate and/or subdivision and transfers to the beneficiaries of parcels of land LR No.s: Nyandarua/Ol Kalou Salient/1775, Nyandarua/Ol Kalou Salient/1774, Nyandarua/Ol Kalou Central/5291 and Nyandarua/Ndemi/ 1712 including the Temp Kiosk at Captain; and the legal costs associated with representations of the parties upon taxation of the same and that the balance of monies remaining be shared equally amongst all the beneficiaries of the estate of the deceased.
- 27) Lastly, she prayed That the honorable court be pleased to issue an order directing the government valuer, Nyandarua County, to undertake a valuation of the properties and to deposit the valuation report of the court: LR No.s: Nyandarua/Ol Kalou Salient/1775, Nyandarua/Ol Kalou Salient/1774, Nyandarua/Ol Kalou Central/5291, and Nyandarua/Ndemi/ 1712, including the Temp Kiosk at Captain for further directions and/or orders on the sharing of the said properties.
- 28) The applicant justified the application on the basis that some of the beneficiaries had been benefiting from selling the trees and that it would be in the spirit of the confirmed grant of letters of administration that the monies from the proposed sale of trees and the bank accounts be used to pay for liabilities arising from the estate and that the remainder be shared equally amongst all the beneficiaries. It was contended that if the orders prayed for are not granted, the applicant and other beneficiaries will continue to suffer irreparable damages and immeasurable losses as this will violate their constitutional rights of protection of the right to property under article 40 of the [Constitution](#).
- 29) It must be noted that the Applicant did not provide any evidence to prove that the administrator, who is the Respondent herein in connivance with other beneficiaries, was intermeddling with the estate by selling trees in Nyandarua/Ol Kalou West/151; therefore, those claims remain allegations before this court as he who alleges must prove. All the same, none of the beneficiaries, including the administrator, is allowed to intermeddle with the estate of the deceased as per section 45 of the [Law of Succession Act](#).



- 30) The grant in respect to the deceased's estate was confirmed on February 4, 2022. As per the Applicant's own annexures, it is clear that the administered has commenced the process of distribution as per the court's orders. The question as to how the estate should be distributed was addressed therein. I am not convinced that the administrator herein is unable to undertake his duty to finalize the administration of the estate.
- 31) Moreover, the court directed that the properties of the deceased be shared equally amongst the beneficiaries. Therefore, the Applicant cannot dictate how the same shall be done to the exclusion of other beneficiaries. The administrator should be allowed to execute his statutory mandate without undue frustration from any of the beneficiaries, particularly the applicant. Each of the beneficiaries shall personally meet the costs of the estate distribution.
- 32) In the premises, I find that the application dated August 30, 2022 is devoid of merit and disallowed entirely.
- 33) With respect to the application dated October 7, 2022, having considered the merits of the application, I find that the same is allowed in the following terms: -

This court issues order : -

I. restraining any of the beneficiaries either by themselves, their servants, or any other person acting from their authorization or control restraining them from intermeddling with the estate, including by constructing permanent structures, selling the property, developing the said property, leasing out the said properties, etc. pending the finalization of distribution of the estate by the administrator.

ii. That Each of the beneficiaries be involved in the process of subdivision and distribution of the estate as ordered by the court on February 4, 2021.

iii. That Joshua Thuo (the administrator herein) be and is hereby ordered to distribute the estate of the deceased as per the certificate of confirmation of grant and to complete the administration of the deceased's estate within 120 days from the date hereof.

iv. That this being a family matter, each party shall bear their owncosts in each of the applications.

DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 13TH DAY OF JULY 2023.

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CHARLES KARIUKI

JUDGE

Page 3 of 3

