



**In re Estate of Edward Murithi Mutegi (Deceased) (Succession Cause
E011 of 2021) [2023] KEHC 22440 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE E011 OF 2021
TW CHERERE, J
SEPTEMBER 21, 2023**

BETWEEN

KEVIN MAWIRA MURITHI 1ST PETITIONER

CATHERINE CIRINDI JOSPETER 2ND PETITIONER

AND

ESTHER MUTHONI MUTEGI OBJECTOR

RULING

1. Edward Murithi Mutegi (Deceased) died sometimes on 17th March, 2021 and was survived by Catherine Cirindi Jospeter (1st Petitioner/Respondent) and Kevin Mawira Murithi (2nd Petitioner/Respondent) who are widow and son respectively to whom letters of administration intestate were issued on December 6, 2021.
2. Sometimes on April 14, 2022, Esther Muthoni Mutegi (Objector/Applicant) who is deceased's sister filed an objection claiming that she owned a spare shop known as Guusheni Auto Spare Dealers at Chuka Township. In the affidavit and in her oral testimony, Objector/Applicant tendered among other documents a registration of business certificate for Guusheni Auto Spare Dealers issued in the name of the deceased on June 20, 2018, application for single business licence for 2017 in the name of Objector/Applicant and licence for the year 2019 in the name of Guusheni Auto Spare Dealers. She stated that the spares shop business solely belonged to her and that deceased who was her employee ran an mpesa business inside the spares shop.
3. In response to the Objector/Applicant's claim, the 1st Petitioner/Respondent on May 30, 2022 filed an affidavit. By the said affidavit and in her oral testimony, 1st Petitioner/Respondent reiterated that she was widow and the 2nd Petitioner/Responder a son of the deceased and the Objector/Applicant was the deceased's sister. 1st Petitioner/Respondent stated that Guusheni Auto Spare Dealers at Chuka Township was solely owned by the deceased as shown on the registration of business certificate issued in



the name of the deceased on June 20, 2018. She additionally tendered two permits for the said business for the year 2019 and 2020 and a rental receipt for the business shop in the sum of Kes. 60,000/- issued in the name of the deceased on October 14, 2020.

4. 2nd Petitioner/Respondent restated the testimony of the 1st Petitioner/Respondent that Guusheni Auto Spare Dealers at Chuka Township was solely owned by his deceased father whereas Alex Mutegi Njeru, the manager of the premises on which the spares shop is situated stated that the deceased and not the Objector/Applicant was their tenant.

Analysis and determination

5. Section 2 of the *Law of Succession Act* (Cap 160 Laws of Kenya) defines “estate” to mean the free property of a deceased person and “free property”, in relation to a deceased person to mean the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death.
6. I have considered the objection and the response thereto and the oral testimonies and written submissions by the parties and the only issue for determination is whether Guusheni Auto Spare Dealers at Chuka Township forms part of deceased’s estate and this court is called upon to determine if the Objector/Applicant has discharged the burden of proof.
7. As a general proposition, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107(1) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. (See *Evans Nyakwana vs. Cleophas Bwana Ongaro* (2015) eKLR).
8. In *Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another* (2015) eKLR, the Court of Appeal held that:

“Denning J. in *Miller Vs Minister of Pensions* (1947) 2 ALL ER 372 discussing the burden of proof had this to say; -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will loose, because the requisite standard will not have been attained.”

9. Applying the law and the cited authorities to the facts in this case, I find as at 2017 when Objector/Applicant applied for a licence to operate a spare shop, Guusheni Auto Spare Dealers had not been registered. In any case, Objector/Applicant only tendered an application for a licence without prove that the licence was subsequently issued and that it related to Guusheni Auto Spare Dealers.
10. Additionally, a receipt for purchase of spare parts in the name of Guusheni Auto Spare Dealers and the chief’s letter to the effect that the spares shop belonged to the Objector/Applicant and the deceased does in my considered view prove joint ownership especially in view of the fact that the business was solely registered in the name of the deceased, licences for the year 2019 and 2020 were issued in the



name of the business and a rental receipt for rent of the business shop was issued in the sole name of the deceased.

11. From the foregoing, I have come to the conclusion that the Objector/Applicant has not proved on a balance of probability or at all that she has a legal claim over for spares bought Objector/Applicant has not demonstrated that the business known as Guusheni Auto Spare Dealers at Chuka township.
12. In the end, this court makes the following orders:
 1. The objection field by the Objector/Applicant on April 14, 2022 has no merit and it is dismissed
 2. The business known as Guusheni Auto Spare Dealers at Chuka township is part of the state of Edward Murithi Mutegei (Deceased)
 3. Objector/Applicant shall bear the costs of this objection
 4. Mention on December 14, 2023 to confirm filing of application for confirmation of grant

DATED AT MERU THIS 21ST DAY OF SEPTEMBER 2023.

T. W. CHERERE

JUDGE

