



**In re Estate of Peter Muigai Ruhiu (Deceased) (Succession Cause 763 of 1997)
[2023] KEHC 24454 (KLR) (Family) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 763 OF 1997
MA ODERO, J
OCTOBER 19, 2023
IN THE MATTER OF THE ESTATE OF PETER MUIGAI
RUHIU (DECEASED)**

BETWEEN

JOSEPH RUHIU MUIGAI PROTESTOR

AND

PATRICK NGUGI MUGAI 1ST ADMINISTRATOR

SUSAN NJERI MUIGAI 2ND ADMINISTRATOR

JUDGMENT

Background

1. The court in this matter is being called upon to determine the Protest filed by Joseph Ruhiu Muigai (hereinafter ‘the Protestor’)
2. This matter concerns the estate of the late Peter Muigai Ruhiu (hereinafter ‘the Deceased’) who died intestate on 31st January 1997.
3. The Deceased was survived by the following:-
 - a) Leah Wanjiru Muigai - Wife
 - b) Joseph Ruhiu Muigai - Son
 - c) John Njuguna Muigai - Son
 - d) Nicholas Gichuru Muigai - Son



- e) Jane Wambui Muigai - Daughter
 - f) Rose Wanjiku Muigai - Daughter
 - g) Susan Njeri Muigai - Daughter
 - h) Patrick Ngugi Muigai - Son
4. The Estate of the Deceased was said to be comprised of the following Assets:-
- a) Dagoretti Ruthimitu Plot Nos. 707,708, 709, 653, 654, 655, 656, 652.
 - b) Karai Gikambura Title Deed Nos. 332, 741, 442.
 - c) Ongata Rongai Plot No. 465A and B
 - d) Kenya Ihenya Traders Co. Certificate No. 393, 395.
 - e) Mathare Traders Certificate No. 369B.
 - f) Embakasi Ranching Co. 5/361.
 - g) Karai Ringuti Title Deed No. 171.
5. Following the demise of the Deceased his widow and son Leah Wanjiru Muigai and Joseph Ruhiu Muigai filed a Petition dated 14th April 1997 seeking to be issued with letters of Administration Intestate. The Grant was duly issued to the two on 21st May 1999.
6. However, vide a ruling delivered on 8th December 2017, Hon. Justice William Musyoka revoked the Grant issued to the two. Subsequently a fresh grant was on 27th February 2018 issued to Joseph Karanja Ruhiu, Patrick Ngugi Muigai and Susan Njeri Muigai.
7. The Administrators then filed a summons for confirmation of Grant dated 30th April 2018. They annexed a proposed mode of distribution of the estate.
8. The Protestor filed a Replying Affidavit dated 26th June 2018 objecting to the proposed mode of distribution of the estate. The matter was fully heard by way of vive voce evidence before Hon. Lady Justice Achode (as she then was). Following the elevation of the trial judge to the Court of Appeal, it now falls upon me to prepare the judgement.

Evidence

9. The Protestor Joseph Ruhiu Muigai told the court that he was a son to the Deceased and was therefore a beneficiary to the estate. He claims that the mode of distribution as proposed by the Administrators was unfair as he was not included in the said distribution despite being a beneficiary to the estate. The Protestor also claims that his uncle Joseph Karanja Ruhiu who is a Co-administrator of the estate has also been excluded.
10. The Protestor complains that he was not aware of nor was he invited for the family meeting convened by the Administrators on 13th December 2016 at which meeting the mode of distribution was discussed. The Protestor also complains that contrary to Kikuyu Cultural Practices no elders were invited to attend the said meeting.



11. The Protestor explains that he objects to the mode of distribution as proposed by the Administrators on the following grounds:-
 - a) That Plot No. Dagoretti/Ruthimitu NO. 652 which is in the assets to be distributed does not form part of the estate and therefore is not available for distribution. The Protestor claims that he purchased this Plot 652 from the Deceased in the year 1986 when the Deceased who was unable to pay a bank loan from Kenya Commercial Bank later charged the property to Barclays Bank to hold the Title.
 - b) That Plots Karai/Gikambura T.741, T.332 and T.442 are not available for distribution as the Titles to those three properties are being held by Barclays Bank of Kenya.
 - c) That Embakasi Ranching Company Plot S/361, Kenya Ihenya Traders Certificate Nos 393, 395 and Mathare Traders Certificate are not available for distribution as they all have cases pending in court.
 - d) That Plot That Plot No. Dagoretti/Ruthimitu Numbers 708 and 709 are not capable of being distributed as Plot 708 is the family burial site whilst Plot 709 is the family home where any beneficiary can reside in case of an emergency.
 - e) That Ongata Rongai Plot No. 465 (A & B) is a commercial property which the estate uses to pay off liabilities. The Protestor claims that his step mother selfishly seeks to acquire this property for herself to the detriment of the entire estate.
12. The protestor accuses the 2nd Administrator of intermeddling in the estate by allowing some beneficiaries to put up permanent structures on estate property. The Protestor asks that the court instead approve and adopt his own proposed mode of distribution of the estate (see Annexure 'JRM 6' to the Replying Affidavit dated 26th June 2018)
13. PW2 Joseph Karanja Ruhiu told the that the Deceased was his step – brother. He confirmed that he was a Co-Administrator of the estate. PW2 stated that the Protestor lived on Plot 652 before Deceased passed away but he has no idea how the Protestor acquired the said property. This witness confirmed that Dagoretti/Ruthimitu NO. 652 is registered in the name of the Protestor.
14. PW2 stated that the entire family agreed on the mode of distribution of the estate but that the Protestor later changed this mind.
15. DW1 was Susan Njeri Muigai who is the daughter of the Deceased and an Administrator of the estate testified that all the beneficiaries agreed on the mode of distribution of the estate and that all save for the Protestor have signed the consent to the mode of distribution as proposed in the summons for confirmation of Grant dated 30th April 2018. The witness states that it is not a requirement that elders attend the family meeting convened to discuss the Succession of the estate of the Deceased.
16. In response to the allegations raised by the Protestor the Administrators respond as follows:-
 - a) That No. Dagoretti/Ruthimitu No. 652 though registered in the name of the Protestor actually belonged to the Deceased. That the Deceased only agreed to transfer the said property to the Protestor as a gift in anticipation of Death to enable the Protestor take a loan from Kenya Commercial Bank. The



Administrators assert that the Protestor never paid any consideration for Plot 652 but in any event they proposed that the Protestor retain the said parcel of Land.

- b) The Administrators deny that Karai/Gikambura T.741, T332 and T.442 are charged to Barclays Bank (now ABSA BANK) Leah Wanjiru Muigai the widow of the Deceased asserts that she has in her possession the original copies of the Title Documents for the three (3) properties.
 - c) That Embakasi Ranching Limited Share Certificate No. 36/ Kenya Ihenya Traders share Certificate Nos. 393 and 395 and Mathare Traders limited are all available for distribution. The Administrators deny that there exists any court case involving these parcels of land.
 - d) The Administrators deny the claim that Dagoretti/Ruthimitu Plot Numbers 708 is the family burial ground. The widow avers that the Deceased and his late mother were both laid to rest in Plot 709 where the Matrimonial home was built. That contrary to what the Protestor has stated, Dagoretti/Ruthimitu/708 is available for distribution.
 - e) The Administrators deny the rental income derived from that Ongata Rongai No. 465 A and B is being used to pay off estate liabilities. Indeed according to the Administrators the estate has no liabilities.
17. The Administrators further state that in keeping with Kikuyu Customary practices on inheritance and in keeping with the intention of the Deceased this Plot 709 is to be given absolutely to Patrick Ngugi Muigai who is the last born son in the family.
18. Finally, the Administrators state that during his lifetime the Deceased pointed out to each child including the Protestor where they were to settle and nobody raised any objection to that arrangement. That all the beneficiaries are adults who have families and have constructed homes and settled on the parcels of land allocated to them.
19. The Administrators urge this court to proceed to confirm the Grant and endorse the mode of Distribution as proposed by the Administrators which mode of distribution has been consented to by all the beneficiaries.
20. Upon close of oral evidence parties were invited to file their final submissions. The Administrators filed the written submissions dated 1st September 2022 whilst the Protestor relied upon his written submissions dated 30th March 2022.

Analysis and Determination

21. I have carefully considered the summons for confirmation of Grant dated 30th April 2018, the Replying Affidavit of Protest dated 26th June 2018, the evidence adduced before the court, as well as the written sub-missions filed by the parties.
22. It is common ground that the Deceased herein passed away on 31st January 1997. A copy of the Death Certificate serial Number 423170 appears as Annexure 'PMR 1' to the Petition for Grant of letters of Administration Intestate dated 1st April 1997.
23. There is no dispute regarding the identity of the beneficiaries to the estate of the Deceased. The Protestor who is a son of the Deceased is recognized as a beneficiary of the estate.



24. This dispute revolve around the mode of distribution of the estate proposed by the Administrators. The Protestor opposes that proposal arguing that neither he nor his uncle Joseph Karanja Ruhiu (PW2) are included in the distribution.
25. Regarding PW2, he confirmed that the Deceased was his step-brother. There is no evidence nor does PW2 claim that he was dependent on the Deceased immediately prior to his demise in terms of section 29 (b) of the Law of Succession Act, cap 160 laws of Kenya PW2 being a step-brother to the Deceased does not fall within the meaning ascribed to a dependant and is not one of those entitled to benefit from the estate of the Deceased.
26. The claim by the Protestor that he was excluded in the proposed mode of distribution is not entirely correct. It is proposed that Dagoretti/Ruthimitu/652 be allocated entirely to the Protestor.
27. The Protestor claims that Plot 652 does not form part of the estate of the Deceased. He states that the said property in fact belongs to him as he purchased it from the Deceased for a consideration of Kshs.80,000.
28. On their part the Administrators insists that Plot 652 does not belong to the Protestor. They assert that the said plot belonged to the Deceased and forms part of the estate available for distribution to the beneficiaries.
29. In law the burden of proof lies on the party who asserts the existence of a fact or a set of facts section 107 of the Evidence Act, cap 80, law of Kenya provides as follows:-

“ 107

 - (1) Whoever desires any court to give judgement as to any legal or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any facts it is said that the burden of proof lies on that person.”
30. In support of his claims over Plot 652 the Protestor has annexed to his Affidavit a copy of a Certificate official search dated 23rd February 2006 in respect of Dagoretti/Ruthimitu/652. That search indicates that the property is registered absolutely in the name of Joseph Ruhiu Muigai (the Protestor herein).
31. The Administrators deny the Protestor’s claim that he purchased the land from the Deceased. According to the Administrators this parcel of land was transferred by the Deceased to the Protestor as a gift to enable the Protestor take a loan from the bank.
32. The legal position is that whether the Deceased transferred the land to the Protestor as a gift or for consideration the fact remains that once the transfer was so registered Plot 652 ceased to be the property of the Deceased and became the property of the registered owner who is this instance is the Protestor.
33. The search certificate indicates that Plot 652 was registered in the name of the Protestor in June 1999 and Title Deed was issued. The property was indicated to have been charged to Barclays Bank of Kenya on 28th June 1999.
34. It is trite law that Title is sufficient proof of ownership. Plot 652 is registered in the name of the Protestor. No allegation of fraud has been made regarding the process of transfer. Accordingly, I find



- that Plot 652 does not form part of the estate of the Deceased and is not available for distribution. The Administrators cannot purport to allocate to the Protestor a property which already belongs to him.
35. In the circumstances the only property assigned to the Protestor was this Plot 652. It is clear that the Protestor has been excluded in the proposed mode of distribution yet he is a beneficiary to the estate.
 36. Regarding the three parcels of land known as Karai/Gikambura T.741, T332 and T.442 the Protestor claims that the three plots are not available for distribution as they were charged to Barclays Bank of Kenya (now ABSA BANK) and that the bank is holding all the three titles.
 37. The Applicant has annexed to his Affidavit a copy of a letter dated 19th March 2003 written by Barclays Bank indicating that Titles for Plots T.332, T442 and T.741 are being held by the bank as security for a loan of Kshs.1,224,024.85 (Annexure 'JRM 3').
 38. It is important to note that this letter was written way back in the year 2003. This Protest was filed in June 2018 almost fifteen (15) years after the bank wrote this letter. Anything could have happened within that fifteen (15) years period. It is not unfathomable that the amount due to the bank was paid of within this period time.
 39. The Administrators categorically deny that the three parcels were charged to any bank. In the Replying Affidavit dated 22nd May 2017, the widow avers that she is holding the original Title Deeds to the said three plots. Annexed to that Affidavit are copies of the Title Documents for Karai/Gikambura T.741 (Annexure LWM '(a)'), Karai/Gikambura T332 (Annexure LWM '(b)') and Karai/Gikambura T.442 (Annexure LWM '(c)')
 40. All the three Title Documents indicate that the three plots are registered in the name of Peter Muigai Ruhui (the Deceased). There is no indication that any of the said plots has been charged to any bank. Even if the properties were at one time charged to Barclays Bank the fact that the widow now has the Title Documents in her possession means that the Bank no longer has any interest in the said properties.
 41. Therefore I find that contrary to the allegations made by the Protestor the three mentioned plots are available for distribution.
 42. The Protestor further claims that the Plots at Embaksai Ranching Limited Certificate No. 361 Certificate Nos. 393 and 395 at Kenya Ihenya Traders and the shares in Mathare Traders Limited are not available for distribution as there are in existence court cases involving those assets. The Protestor has annexed copies of court pleadings for Civil Case No. 1328 of 2002: Joseph Ruhui Mungai -vs- Elizabeth Wanjiku & Embakasi Ranching Company Limited (Annexure JRM'4')
 43. Firstly, the pleading annexed by the Protestor involves only Embakasi Ranching Company limited. There is no evidence of any case involving Kenya Ihenya Traders or Mathare Traders.
 44. Secondly, the current status of this suit No. 1328 of 2002 is not indicated. This is a case which was filed way back in the year 2002. It is unlikely that the case has been stagnant. There is no indication of the current status of that case and whether said case has since been disposed of.
 45. The Administrators on their part assert that they are not aware of any current court cases involving these assets. I find that the Applicant has failed to prove allegation that the said assets are not available for distribution and I dismiss that claim.
 46. The Protestor further claims that Dagoretti/Ruthimitu/708 and 709 cannot be distributed as Plot 708 is the family burial ground whilst Plot 709 is the family home which is to be left available for any beneficiary to reside in, in event of an emergency.



47. The Protestor has not adduced any evidence of a family agreement that Plot 709 ought not be distributed but rather should be left available for any family member to reside in.
48. The Administrators deny the Protestors claim that Plot 708 has been set aside as the family burial ground. On the contrary the widow avers that both the Deceased and his mother were laid to rest in Plot 709 not in Plot 708. The Protestor has not proved his claim that this parcel of land is reserved as a family burial site. I find that the two parcels of land belonged to the Deceased and form part of his estate. They are therefore available for distribution.
49. Finally, the Protestor alleges that Plot 405 (A & B) Ongata Rongai cannot be distributed as it is commercial property whose rental income is utilized to pay off estate liabilities. Once again the Protestor has not tendered any evidence that the family all agreed to use the rental income derived from this plot to settle estate dues.
50. According to the Administrators the estate has no liabilities which require to be paid. The Protestor has not specified what these liabilities are. I find no merit in this claim.
51. Based on the foregoing I find that L.R Dagoretti/Ruthimitu/652 belongs to the Protestor. The same does not form part of the estate of the Deceased and is not available for distribution. The other properties form part of the estate of the Deceased and are available for distribution. In the mode of distribution proposed by the Administrators the Protestor was to be allocated Plot 652 which this court has already found belonged to the Protestor.
52. Given the above finding the Family will need to amend the proposed mode of distribution of the estate to include the Protestor.
53. This Protest therefore succeeds. The Administrators to file an Amended Schedule of Distribution within Sixty (60) days. Each party to meet its own costs.

Dated in Nairobi this 19th day of October, 2023.

MAUREEN A. ODERO

JUDGE

