



**In re Estate of Thomas Mutitu Gachuhi (Deceased) (Succession Cause 769 of 2015) [2023] KEHC 22942 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 22942 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 769 OF 2015**

**J WAKIAGA, J**

**OCTOBER 3, 2023**

**(FORMERLY NAIROBI HIGH COURT SUCCESSION CAUSE NO 2827 OF 2008)**

**IN THE MATTER OF THE ESTATE OF THE ESTATE  
OF THOMAS MUTITU GACHUHI (DECEASED)**

**BETWEEN**

**MARGRATE NJERI NYOIKE ..... NOMINAL RESPONDENT**

**AND**

**JOYCE NJERI GACHUI ..... APPLICANT**

**RULING**

**Introduction**

1. On the 8<sup>th</sup> December 2008, the Respondent applied for Grant of letters of administration as the widow of the deceased herein and named herself as the wife and widow, Ann Njoki Kinyanjui and Naomi Wanjiru Wanjohi as daughters and the Objector as the sister which Grant was subsequently issued on 14<sup>th</sup> April 2009.
2. On the 29<sup>th</sup> day of September 2009, the Objector took out summons for the revocation/annulment of the Grant on the grounds that it was obtained through fraud, misrepresentation and concealment of material facts that the Objector had lived on LR No LOC 1/Mugumoini/961 together with her children which though a family land was registered in the name of the deceased.
3. On 24<sup>th</sup> July 2013 the Respondent applied for Confirmation of the Grant and proposed the mode of distribution as follows:

Schedule

Name Description of Property Share of Heirs



Margaret Njeri Nyoike

Land Parcel No.

LOC.1/Mugumoini/961

To get One (1) Acre

Anne Njoki Kinyanjui

Land Parcel No.

LOC.1/Mugumoini/961

To get three quarter ( $\frac{3}{4}$ ) of an acre

Naomi Wanjiru Wanjohi

Land Parcel No.

LOC.1/Mugumoini/961

To get half ( $\frac{1}{2}$ ) of an acre

Joyce Njeri Gachuhi

Land Parcel No.

LOC.1/Mugumoini/961

To get Quatre ( $\frac{1}{4}$ ) of an acre

4. By an Order of the Court dated 29<sup>th</sup> September 2015 this file was transferred to this Court suo Moto for determination and for some strange reasons the Petitioner on 24<sup>th</sup> May 2017 took out summons in which she sought for an Order of injunction restraining the Objector from interfering with the peaceful occupation and access to the subject property on the ground that the Objector was encroaching and or trespassing on the portion which she was utilizing and had dug dismantled and levelled the grave of the deceased and cutting down trees. The Petitioner sought the said Order pending the hearing and determination of this cause.
5. In response the Objector filed a replying affidavit in which she sought that the Court should visit the suit land to establish the position on the ground and contended that the Petitioner was not staying on the suit land and that the Court had by a Ruling dated 28<sup>th</sup> June 2012 established that she was a dependant of the deceased and was in actual occupation of the disputed land.
6. On 15<sup>th</sup> March 2018, the Objector sought for an Order of injunction against the Petitioner from interfering with her occupation and cultivation of the suit property pending the determination of the distribution of the estate on the grounds that the petition having abandoned her application for injunction had taken the law into her own hand by causing chaos on the ground.
7. The Petitioner did not respond to the said application but on 16<sup>th</sup> October 2018 took out summons for Confirmation of the Grant issued herein and proposed that the property herein be shared amongst the following:
  - a. Margaret Njeri Nyoike - Widow
  - b. Ann Njeri Kinyanjui - Daughter
  - c. Naomi Wanjiru Wanjohi - Daughter



- d. Samson Nyoike - Son
  - e. Joseph Maina - Son
  - f. Peter Murigi - Son
  - g. Jane Wanja - Daughter
  - h. Lucy Wanjiku - Daughter
  - i. Susan Mumbi - Daughter.
8. The Objector in response filed an affidavit of protest in which she stated that she was the elder sister of Thomas Mutitu Gachuhi, the husband of the Petitioner herein who was registered as the proprietor of the suit property herein in trust and that in the year 1969 he got married to the Petitioner with whom he had two children before she ran away only to return upon his death. On 22th July 1986 the Objector was declared the guardian of the deceased who was at that time suffering from a mental illness.
  9. She contended that when the Petitioner on 21<sup>st</sup> October 2008 first applied for Confirmation of Grant she had indicated the Objector as a beneficiary of the estate and further on 24<sup>th</sup> July 2012 the Court recognized her as a dependant based on the Ruling delivered on 28<sup>th</sup> June 2012. She deposed that she was entitled to the half share of the estate as the land belonged to their parents.
  10. On 19<sup>th</sup> February 2019 the Court issued the following directions:
    - a. The Protestor to file and serve written witness statements and set of documents within 21 days.
    - b. The Administrator to file and serve statements and documents within 21 days of service.
    - c. The statements shall at the hearing be adopted as evidence in chief and be subjected to cross examination.
  11. On the 29<sup>th</sup> November 2022, the parties appeared before me for the first time on this matter and as is the practice of this Court, upon inquiring from the Objector whether the issue of trust had been established, Mr Wambugu Advocate indicated that their case was founded not on trust but on the provision of dependency upon which the Court directed that the said application be filed.
  12. On the 20<sup>th</sup> December 2022, the Objector took out summons for provision of a dependant and sought an Order that she be granted one and half acres from the subject property while the Petitioner be granted one acre on the basis that she had been living on the subject land for the rest of her life whereas the Petitioner does not live thereat, with only her daughter called Anne Nyeri Kinjanjui who had been cultivating a partition thereon measuring one Acre after a period of 39 years.
  13. In response the Petitioner filed a replying affidavit in which it was deposed that the Applicant was not a beneficiary of the estate of the deceased even though she utilizes a portion thereof measuring 0.145 acres as a kitchen garden which she should be entitled to.

### **Submissions**

14. On behalf of the Applicant, it was submitted that it was admitted that the Applicant is the elder sister of the deceased while the Petitioner is the wife and that the Applicant had through a Court Order been appointed as the guardian of the deceased while the Petitioner was away for a period of over 39 years and that as per the valuation report by the Petitioner the homestead belongs to the Applicant who has been living thereat since 1969. It was contended that since the Applicant has eight units whereas the Petitioner has four units which should be taken into account while distributing the estate.



15. On behalf of the Respondent it was submitted that the Applicant being a sister of the deceased was not a direct beneficiary of the estate by virtue of Section 30 of the Act. Whereas the Applicant had been declared as a dependant in Succession Cause No 2827 of 2008, the Applicant did not include a used report with the application to enable the Court determine her claim to the estate and in support of the same contrary to the provisions of Section 107 of the *Evidence Act*.

### **Determination**

16. I have taken into account the pleadings herein, the applications filed herein and not prosecuted and come to the conclusion that all those pending applications were compromised by the parties when they agreed that the Court determine the issue of dependency on the basis of written submission whereas Kimondo J had given directions that the matter be determined through oral evidence and that the witness statements presented before the Court though not subjected to cross examination has established the facts as set down herein.
17. The following facts are not disputed from the material placed before the Court by the parties: The chief's introductory letter dated 27<sup>th</sup> August 2008 named the Applicant, the Petitioner and her two daughters as the survivors of the estate of the deceased herein and the chief was specific that the Applicant who is unmarried sister of the deceased occupies land with her children and that both the Objector and the Petitioner should be joint administrators.
18. The Petitioner on 24<sup>th</sup> July 2013 indicated that the Objector was a dependent of the estate and made provision for her while applying for confirmation of Grant as stated herein above. The Objector was Granted guardianship of the deceased by the Court thereby confirming her contention that the Petitioner had taken off as most ladies do when the deceased was inflicted by an illness of the mind.
19. That the Court declared the Applicant a dependent which Order was not applied against and that whereas the Applicant abandoned her claim on trust, it is clear to my mind that the deceased held the subject property on trust.
20. Having taken into account the chief's letter and the documentary evidence placed before the Court and in particular the fact that the Petitioner took off from the estate only to return upon the death of the deceased and the fact that the Applicant stood with the deceased during the difficult part of his life I am satisfied that the Applicant has established her claim on a balance of probability and subsequently allow her application and direct and Order that the same is entitled to one and half acre of the suit property and that the same is entitled to the portion she has been occupying to date.
21. I therefore confirm the Grant issued herein and declare that the subject property be distributed as follows:
- a. Margaret Njeri Nyoike .....1 Acre for herself and intrust of her two daughters with the deceased namely Anne Njoki Kinyanjui and Naomi Wanjru Wanton.
  - b. Joyce Njeri Gachui ..... 1½ Acres Absolutely.
22. This being a family dispute each party shall bear their own cost and it is Ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 3<sup>RD</sup> DAY OF OCTOBER 2023.**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**



Mr. Kirubi for Respondent

Ms Magwa for Mr. Wambugu Kariuki for Objector

Jackline - Court Assistant

