



REPUBLIC OF KENYA



**In re Estate of Muiruri Njuguna (Deceased) (Succession Cause 86 of 2012)
[2024] KEHC 14580 (KLR) (Family) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 86 OF 2012
PM NYAUNDI, J
NOVEMBER 21, 2024
IN THE MATTER OF THE ESTATE OF MUIRURI NJUGUNA (DECEASED)**

BETWEEN

**DAVID WABURI MUIRURI 1ST APPLICANT
JASON KIMANI MAAI 2ND APPLICANT
MARY NJERI MUIRURI 3RD APPLICANT**

AND

**JOSEPH GACHEMA MAAI 1ST RESPONDENT
FRANCIS GACHEMA MUIRURI 2ND RESPONDENT
JOSEPH MBURU MAAI 3RD RESPONDENT**

RULING

1. The Notice of Motion dated 22nd July 2024 is presented by the 1st Applicant, David Waburi Muiruri under Section 74 of the Succession Act and Rule 73 of the Probate and Administration Rules. It seeks the following orders;
 1. Spent.
 2. That a fresh confirmed grant do issue in the name of the new administrators to facilitate smooth administration and issuance of title deeds as mutation has been done.
 3. That the costs of this application be in the cause.
2. The application is based on the facts contained in the applicant's supporting affidavit dated 22nd July 2024. It is averred that the administrator of the estate, Teresia Wangari Muiruri died on 21st December



2023. A confirmed grant by Githunguri Law Court in Succession Cause No. 10 of 2003 was upheld by the High Court. Honourable Justice Muigai in her ruling of 22nd April 2016 confirmed that there were errors in names and acreage which she later rectified to read the correct names and acreage.
3. By the time the administrator died, mutation had been done. On 18th July 2023, this court appointed Jason Kimani Maai, David Waburi Muiruri, Peter Njuguna Maai and James Njuguna Maai as the new administrators of the estate of the deceased. When the grant of letters of administration were issued to the land surveyor, he indicated to them that the confirmed grant should have the names of the new administrators.
 4. The application is opposed by the Respondents vide a replying affidavit sworn on 6th August 2024 by Joseph Gachema Maai. He averred that the death certificate of the late Teresia produced by the Applicant(s) is a forgery; she died at the age of 102 years and not 77 years old. That Honourable Justice Muigai did not uphold the confirmed grant. In her judgment dated 4th March 2015, she interfered with the mode of distribution by the Githunguri Court. He averred the judgment attached by the applicants is a forgery and made up to suit the selfish interests of the Applicants.
 5. He indicated to the court that the Respondents have no objection for the new administrators to be included in the Certificate of Confirmation of Grant but the grant should be confirmed as per the judgment of Honourable Justice Muigai dated 14th March 2015.
 6. The Applicants filed submissions dated 9th October 2024 which are a reproduction of the contents in the supporting affidavit. The Respondents did not file any written submissions.

Analysis and Determination.

7. The only issue for determination is whether the application dated 22nd July 2024 has merit.
8. On 18th July 2023, Hon S.N Riechi J allowed the application for substitution of the administrators of the estate. Jason Kimani Maai, David Wamburi Muiruri and James Njuguna Maai were appointed the new administrators of the estate.
9. There is no dispute as to who are the administrators of the estate. What is disputed is how the estate should be distributed. The Applicants argue that the grant should be confirmed as per the judgment of the Court at Githunguri. The Respondents on the other hand argue that the grant should be confirmed as per the judgment of 4th March 2015.
10. I have looked at both the judgment of 4th March 2015 and the Ruling of 22nd April 2016 which were delivered by Hon. Lady Justice M. Muigai. The judgment of 4th March 2015 held that the grant was valid and approved the confirmed grant in the following terms. I will reproduce order (4) which states that;

The confirmed grant of 18th January, 2005 did not have written consent of all beneficiaries. However, there was a protest by Mary Nyokabi which made the Court hear oral evidence of the administrator, son, buyer, and objector and vide judgment of 14th September, 2006 decided on the confirmed mode of distribution under Section 71 of *Law of Succession Act* Cap 160. The requirement of consents was overtaken by the interpartes hearing.

The grant is also valid as there was full disclosure of list of beneficiaries, list of assets and proposed mode of distribution except from who would get what; The confirmed grant is approved by this Court in the following terms;

- a. Teresia Wangari Muiruri - 1.69 acre



- b. Eunice Kuria - 0.25 acre
- c. Mary Nyokabi - 0.25 acre
- d. Mary Njeri - 1.69 acre
- e. James Njuguna -1.69 acre
- f. Peter Njuguna - 1.69 acre
- g. Joseph Karanja - 1.69 acre
- h. Mburu Maai - 1.69 acre
- i. Joseph Gachena - 1.69 acre
- j. Francis Gachena - 1.69 acre
- k. David Wachira - 1.69 acre
- l. James Kimani - 1.69 acre

11. This prompted the filing of Application dated 7th July 2015 by the Applicant David Waburi Muiruri seeking the following orders inter alia

- a. This Court's Ruling of 4th March 2015, be reviewed to reflect shareholding and correct names as appears in the confirmed grant of Succession Cause No. 10 of 2003.

12. It is common ground that in the judgment of 4th March 2015 the Court provided for distribution of the Estate that was divergent from the Certificate of Confirmation of grant as issued by the Court at Githunguri.

13. This issue was addressed by the Court in its ruling of 22nd April 2016 where it clarified the ruling of 4th March 2015 as follows

- a. The confirmed grant issued by Senior Resident Magistrate's Court Githunguri on 14th September, 2006 provided for the distribution of the estate of the deceased Muiruri Njuguna with regard to Gatamaiyu/Kagwe/471 and Gatamaiyu/Kagwe/548...
- e) With regard to Change in shareholding the measurements shall be as in the confirmed grant...

14. The mode of distribution was again addressed by the Court in Judgment delivered on 29th January 2019. The Court stated as follows-

On 4th March 2015 this Court dismissed the said application and reaffirmed the confirmation of the said grant in the following terms;.....

There arose some error in the names and slight deviation from the confirmed grant relied on by the Court. This prompted some of the beneficiaries to file the application dated 7th July 2015. The Court in resolving the said issue held as follows;

- e) With regard as to the shareholding the measurements shall be as in the confirmed grant

From the foregoing it is clear that this Court adopted the Certificate of Confirmation as per the initial certificate of confirmation of grant made by the Githunguri Law Courts and as such the same position prevails to date. As such I find the Applicant's application lacks merit and I dismiss it.



15. It is apparent therefore that the Court reviewed the mode of Distribution it had set out in its ruling of 4th March 2015 and reiterated that the appeal vide High Court Appeal Cause 52 of 2006 against the Judgment in Githunguri Law Courts having been struck out, the challenge to the certificate of confirmation dated 14th September 2006 was not tenable.
16. For these reasons, I will allow the Application dated 22nd July 2024 and confirm that distribution of the Estate will be as per Certificate of Confirmation of Grant dated 14th September 2006 issued by the Magistrate's Court at Githunguri.
17. This being a family matter there shall be no order as to costs.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2024.

P. M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

