



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

In re Estate of the Late Elizabeth Wanjiku Gichohi (Deceased) (Succession Cause 174 of 2004) [2024] KEHC 14019 (KLR) (8 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14019 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 174 OF 2004
SM MOHOCHI, J
NOVEMBER 8, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
ELIZABETH WANJIKU GICHOHI (DECEASED)**

BETWEEN

ESTHER MUTHONI GICHOHI APPLICANT

AND

MICHEAL KIGUTA 1ST RESPONDENT

EDWARD MWANGI GICHOHI 2ND RESPONDENT

RULING

1. The Applicant filed the Summons dated 10th November, 2022 brought under Section 74 of the [Law of Succession Act](#) and Rules 49 and 73 of the Probate and Administration Rules seeking:
 - i. That this Honourable Court do amend the Certificate of Confirmation of Grant issued on 22nd June, 2007 so as to reflect the specific portions of the beneficiaries as was directed by Hon Justice Martha Koome (as she then was Judge of the High Court) in her ruling of 22nd June, 2007 relating to Plot No. Nakuru Municipality Block 2/259;
 - ii. That a re-survey to be done in conformity with the Amended Grant with all beneficiaries sharing the costs equally; and
 - iii. That costs be borne by the Administrator.

Brief Facts

2. Grant of letters of Administration to the Estate of Elizabeth Wanjiku Gichohi were issued to Micheal Kiguta on 22nd June, 2007 and a Certificate of Confirmation of Grant was subsequently issued. There has been a boundary dispute in LR No. Nakuru Municipality Block 2/259 between the Applicant and



the 2nd Respondent and the challenge allegedly is on how to subdivide. On 20th June, 2023, the Court directed parties to agree on a surveyor and a report dated 6th October, 2024 was filed Court by Wahome Werugia Land Surveyors on 14th November, 2023.

Applicant's Case

3. The Application was supported by the Affidavit sworn by the applicant of even date. It was her case that, the Grant does not reflect the specific portions of each beneficiary as specified in the consent where all beneficiaries were to share Nakuru Municipality Block 2/259 equally. That the consent had a sketch map and the specific number of developments the beneficiaries were to get. That the beneficiaries have been living in their portions but there has never been any transfer by way of transmission.
4. The Applicant argued that if the administrator were to distribute the property as per the Extracted Grant, it would re-distribute the property contrary to the consent and the Courts' ruling of 22nd June, 2007. It was her case further that implementing the grant as is would be to implement the proposed surveyors plan which was rejected by Court in the Ruling that has not been challenged.
5. She argued that the application to rectify the grant Nakuru HC Succession Cause No. 198 of 2004 was dismissed by Emukule J. as the Court saw there was no error but on 30th October, 2014, they were directed by Mshila J. to attempt mediation but parties have failed to agree. That she has made an attempt to settle the matter amicably but the Respondents have been adamant therefore seeks the Court's indulgence.

2nd Respondent's Case

6. In his replying affidavit sword 20th March 2023, the 2nd Respondent argued that the application is redundant and an abuse of the Court process since the proceedings relating to Nakuru Municipality Block 2/259 were declared a nullity in the Ruling of 12th October, 2011 and can therefore not be subject to litigation in the present suit.
7. It was his case that the property was distributed in Succession No. 198 of 2004 in the matter of the Estate of Joseph Gichohi Kiguta equally among all the beneficiaries. That, the Ruling by Justice Emukule of 12th October, 2011 dismissed the applicant's application seeking to review, amend, correct and alteration of the Grant issued on 20th April, 2007, holding that the Application was in respect of re-distribution of the estate to the desire of the Applicant.
8. That the Applicant preferred an appeal against the said Ruling but has since not prosecuted it. That Nakuru Municipality Block 2/259 has already been distributed and that there was no error, it has been heard and the application has already been determined and is thus res judicata.

Applicant's Submissions

9. In the submissions 2nd July, 2024 the Applicant submitted on three issues. Firstly, on whether the application, is res judicata. She outlined the elements that would give rise to res judicata as provided for under Section 7 of the *Civil Procedure Act* and as discussed in *Uhuru Highway Development Ltd v Central Bank of Kenya [1999] eKLR* and *Independent Electoral & Boundaries vs Maina Kiai & 5 Others [2017] eKLR*.
10. It was submitted that the issues raised were different as they seek to amend the Certificate of Confirmation of Grant as was directed by Justice Koome while the Application dated 8th March sought for review and alteration of the Certificate of Grant.



11. Secondly, on whether the Application is merited she submitted that if the surveyors report is implemented, she stood a portion of the matrimonial home would be demolished and therefore the application falls within the purview of errors listed under Section 74 of the Law of Succession.

2nd Respondents' Submissions

12. The Respondent submitted that the surveyor was agreed on by all parties. That the survey report considered and resolved the boundary dispute ensuring each beneficiary has access to their portions and should therefore be adopted by Court.

Analysis and Determination

13. What is before me is an application for Rectification of Grant the alleged rectification sought is the Grant does not reflect the specific portions of each beneficiary as specified in the consent where all beneficiaries were to share Nakuru Municipality Block 2/259 equally.
14. This Application is opposed by the 2nd Respondent that, the application is redundant and an abuse of the Court process since the proceedings relating to Nakuru Municipality Block 2/259 were declared a nullity in the Ruling of 12th October, 2011 and can therefore not be subject to litigation in the present suit.
15. The motion is equally opposed as being Res Judicata and that the property was subject to distribution in Succession No. 198 of 2004 (the estate of the late Joseph Gichohi Kiguta) where each beneficiary was to get at least 0.0839 Ha. I further concur with the position taken by Emukule Judge (as he then was) that Nakuru Municipality Block 2/259 is a leasehold registered under the tenancy-in-common regime where there is no right to survivorship until the remaining co-tenant is also deceased.
16. I thus concur with the Ruling of the Court in Succession No. 198 of 2004 (the estate of the late Joseph Gichohi Kiguta) that at the time the Consent dated 18th May 2005 was entered into the Nakuru Municipality Block 2/259 was in law unavailable for distribution.
17. This Court appreciates that, the Applicant has remained restless and unsatisfied owing to the fact that her share reduces in size owing to the current regime on subdivision to set aside at least 9 meters wide access road. To this Court here lies the crux of the dispute and that this Court is of the view that distribution in succession is supposed to be equal which does not connote mathematical precision but rather all the beneficiaries should receive similar shares. Under such circumstances the Applicant should be content with her share.
18. A smaller issue in dispute is the fact that the 2nd Respondent has failed to transfer respective shares to respective beneficiaries. I am of the view that leasehold properties such as the Nakuru Municipality Block 2/259 are transmitted not by way of transfer but rather by way of "Assent to bequest" by the Administrator.
19. This Court finds the summons for rectification of the grant 10th November, 2022 to constitutes res judicata contravening Section 7 of the *Civil Procedure Act*; two other similar motions have been made in this regard by the Applicant and I thus need to say no more.
20. The Court notes the content of the report dated 6th October, 2024 filed by Wahome Werugia Land Surveyors and that the parties may utilize the same to prepare the relevant assent to bequest forms for transmission to be undertaken within Succession No. 198 of 2004 (the estate of the late Joseph Gichohi Kiguta).



21. The Summons dated 10th November, 2022 is accordingly found to be without merit and the same is dismissed.
22. I Shall not award any costs, this being a dispute amongst siblings.
23. This Court shall thus direct the Probate to be marked as closed.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED ON THIS 8TH DAY OF NOVEMBER, 2024

MOHOCHI SM

JUDGE

