



**In re Estate of Isaac Kireru Njuguna (Deceased) (Succession Cause  
1064 of 1994) [2024] KEHC 13668 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13668 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
SUCCESSION CAUSE 1064 OF 1994  
HK CHEMITEI, J  
NOVEMBER 7, 2024**

**BETWEEN**

**MARY WANGARI KIRERU ..... 1<sup>ST</sup> APPLICANT**

**SERAH NDUTA KIRERU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EVANS KIMANI NJUGUNA ..... 1<sup>ST</sup> ADMINISTRATOR**

**ISAAC KIRERU NJUGUNA ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. This ruling relates to the application dated 16<sup>th</sup> November, 2023 filed by the Applicants, Mary Wangari Kireru and Serah Nduta Kireru, seeking for Orders That:-
  - (a) Spent.
  - (b) Leave be granted to the firm of DW Gichio and Company Advocates to come on record for the applicants and pleadings herein be deemed properly on record.
  - (c) All proceeds of rent due to the estate from 36/III/ 1150 Eastleigh be deposited in court and accounts be rendered by Evans Kimani Njuguna and Patrick Njuguna and the same be distributed to the beneficiaries equally as per the terms of the confirmed grant.
  - (d) The court's executive officer do execute all relevant documents to facilitate the transfer by way of transmission, sub – division and registration of the following land parcels in favour of the respective beneficiaries:-
    - i. Chania Kanyoni 643/24.



- ii. Ngenda/nyangara/220.
  - iii. Thika Municipality Block 19/744.
  - iv. Kiganjo/gatei 1354.
  - v. Lr No. 21009/15 South West Of Thika Municipality.
- (e) Land registrars do register transfer by way of transmission and dispense without production of the old title deeds of the aforementioned land parcel numbers that got lost or misplaced during the time of the deceased and cannot be found.
  - (f) Sub – division of the aforementioned properties to be conducted by the area District Surveyor with support of the Area Chief.
  - (g) Costs of this application be provided for.
2. The application is supported by the grounds thereof and the affidavit sworn by Mary Wangari Kireru and Serah Nduta on 16<sup>th</sup> November, 2023. They aver, inter alia, that letters of administration to the deceased's estate were issued to Evans Kimani Njuguna, Patrick Njuguna Kireru and Hannah Mwihaki Kireru on 3<sup>rd</sup> May, 2019. The administrators have since refused to sign the LRA 39 and LRA 42 transmission forms for the properties that form the deceased's estate thus denying the beneficiaries their inheritance.
  3. That the administrators are collecting rent from property number 36/III/150 Eastleigh and not distributing the same to the beneficiaries.
  4. Patrick Njuguna on the other hand has invaded LR NO. 21009115 South West Of Thika Municipality operating a quarry on it and misleading 3<sup>rd</sup> parties to buy plots from it.
  5. The properties that form the deceased's estate should therefore be transferred to Hannah Mwihaki Kireru, Patrick Njuguna Kireru, Peter Githu, John Kimani, Serah Nduta, Francis Kiarie, Mary Wangari and George Maina.
  6. They averred that Hannah Mwihaki Kireru, their mother, is of advanced age, sick and in need of constant care yet she cannot access the deceased's estate.
  7. The application is opposed vide replying affidavit sworn by Patrick Njuguna Kireru on 20<sup>th</sup> February, 2024 where he avers, inter alia, that the applicants have never served the administrators with the transmission forms.
  8. Regarding the rent from the Eastleigh property he deponed that since 2018 when their mother fell ill, it has been deposited in a joint bank account where the applicants are signatories. Their mother had been collecting the rent before 2018 and after the deceased died.
  9. The quarry business on the other hand was done with all the beneficiaries' consent and he refilled the land, sub – divided it into plots and sold some of the portions. There is however an existing appeal, filed by the applicants, Nairobi Appeal E228 OF 2020 on the deceased's estate.
  10. The application is further opposed vide grounds of opposition filed by Evans Kimani Njuguna stating that a judgment has already been delivered in this matter and the court is now functus officio; that there is already an appeal pending at the Court of Appeal against a decision on review emanating from



the said Judgment and as such the application is totally misplaced and cannot be entertained until the Appeal is disposed.

### **Analysis And Determination**

11. I have gone through the application, the response thereto and rival submissions and I find that the basis for the application lies squarely on the grant confirmed on 3<sup>rd</sup> May 2019 by my sister Ongeru J.
12. The same granted Hannah Muihaki, their mother, and the 3 administrators herein to hold the properties in trust for herself and the children who include the applicants herein.
13. The Eastleigh property was also to be shared equally between the parties.
14. All that has happened since then is simply a laid-back approach by the parties to sort out how they intend to divide up the estate. Although there is a claim of a pending appeal, there is no evidence that the appellate court has stayed these proceedings. To that extent therefore this court shall proceed to determine what is before it.
15. On the question of the court being functus officio, I do not think in this case the argument holds for the simple reason that the estate is yet to be distributed by their mother who is holding it in trust for them.
16. In my considered view therefore, the best approach is to have the beneficiaries agree on how they will divide the properties which their mother is holding in trust. Once that is done then the matter can be finalized once all the beneficiaries have been issued with respective title instruments.
17. As to the issue surrounding the rent from the Eastleigh property, it is imperative to note that from 3<sup>rd</sup> of May 2019 the property was shared equally and the administrators ought to account for the rent so far collected. If there is a joint account which is accessed by the applicants as deposed by the respondents then the same should form part of the accounting exercise. In other words, whatever proceeds accruing from the property must be shared out equitably as indicated in the grant.
18. On the issue of the lost titles, I find that the applicants have not convinced the court of such losses. There is no documentary evidence and at any rate the administrators have not come out to declare that they do not have the titles.
19. The prayer for subdivision of the properties by the surveyors will be meaningful once the parties herein have agreed on the mode of sharing out. Otherwise, such an order will not be necessary for now.
20. Consequently, the application is allowed as hereunder:-
  - (a) The firm of D W Gichio is hereby allowed to come on record and whatever has been filed is deemed properly on record.
  - (b) The beneficiaries herein as per the confirmed grant dated 3<sup>rd</sup> May 2019 are hereby directed within 45 days from the date herein to agree on the mode of distribution of all the properties contained in the grant.
  - (c) Once (b) above is agreed, the parties be at liberty to have any subdivisions carried out by the relevant government survey office and the administrators to sign unconditionally the transmission instruments.
  - (d) The administrators within 45 days from the date herein must provide accounts of all the rent collected from land parcel number 36/III/1150 Eastleigh Nairobi from 3<sup>rd</sup> May 2019 and the same be filed in this court.



(e) Costs in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIDE VIDEO LINK THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024.**

**H K CHEMITEI**

**JUDGE**

