



In Re Estate of Ruth Mirigo Kamande (Deceased) (Succession Cause 17 of 2019) [2024] KEHC 13702 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE 17 OF 2019
CM KARIUKI, J
NOVEMBER 7, 2024**

IN THE MATTER OF THE ESTATE OF RUTH MIRIGO KAMANDE (DECEASED)

BETWEEN

FREDRICK KAMAU KAMANDE PETITIONER

AND

DAMARIS WANGARI NDUNGU 1ST BENEFICIARY

KAGURE KAMAU 2ND BENEFICIARY

RULING

1. The Petitioner herein filed an application dated 10 November 2021 seeking confirmation of the grant in which he proposed that the estate of the deceased herein be distributed as follows:-Nyandarua/Turasha/492 to:-Fredrick Kamau KamandeDamaris Wangari Ndungu - (in equal shares)Kagure KamauNyandarua/Turasha/491 to:-Fredrick Kamau KamandeDamaris Wangari Ndungu - (in equal shares)Kagure Kamau
2. The 1st and 2nd Protestor filed their affidavit of Protest against the confirmation of the grant as proposed on 9 May 2022. In their affidavit, they proposed that the estate be shared and distributed as follows:-Nyandarua/Turasha/491 to Peter Maina Njoroge, who was a purchaser from their deceased motherNyandarua/Turasha/492 to Damaris Wangari Ndungu and Kagure Kamau jointly in equal shares
3. Further, another affidavit was filed by a 3rd Protestor, namely Evans Muindi Mwangi, on 3 October 2022, claiming that he was the deceased's grandson and that Nyandarua/Turasha/491 ought to be given to him.
4. Petitioner's/Administrator's Submissions.



5. The Petitioner submitted that the issues of determination are as follows:-Who is to inherit the two properties?Who bears the costs of this cause?
6. It was stated that according to the Protestors, i.e., Damaris Wangari Ndungu and Kagure Kamau, the properties ought to be distributed as follows:Nyandarua/Turasha/491 to go to Peter Maina NjorogeNyandarua/Turasha/492 to go to Damaris Wangari Ndungu & Kagure KamauFurther, another Protestor- Evans Muindi Mwangi, proposed that Nyandarua/Turasha/491 and 492 belong to him and his siblings.
7. The Petitioner submitted that in his application for confirmation, he applied to have the property equally distributed. However, later on in his response to the Protest dated 14 July 2022, he indicated that the Nyandarua/Turasha/492 should go to Peter Maina (a Purchaser) while Nyandarua/ Turasha/491 should go to his late brother Harrison Kamande, who was being represented by his son (Evans Muindi Mwangi) since he was deceased.
8. It was asserted that the Protestor beneficiaries called two witnesses:-
9. PW1 Damaris Wangari, who was a daughter of the deceased, stated that her late mother had 95 acres and had been blessed with nine children. She stated that prior to her death, she had subdivided her land among her children and sold 4 acres to Peter Mana Njoroge.
10. PW2 was Peter Maina, who said that he was a purchaser of 4 acres from the deceased. He indicated he wanted to buy five acres but was not able to. He confirmed that he did not have the land board's consent, that he was occupying the two properties, and that there was an Environment and Land Court case against him for eviction by the Administrator. He said he wanted his four acres comprised of Nyandarua/Turasha/491.
11. The 2nd Protestor, Evans Muindi Mwangi, was a great-grandson of the deceased. His father was Harrison Kamande, a beneficiary of 5 acres of land. He said he did not have any evidence or a written agreement between the late great-grandmother and his late father. He prayed that the 5 acres comprised in Nyandarua/ Turasha/ 491 be given to him and his siblings.
12. The Administrator indicated that when the mother died, he had sold five acres to his grandson Harrison Kamande; hence, he would not mind Evans and his siblings getting the 5 acres comprised in Nyandarua/ Turasha/49. In fact, he supported that position.
13. He confirmed that Peter Maina had bought four acres, and he did not oppose him getting the same. Nyandarua/ Turasha/492 was four acres according to the title deed, and he opined that Peter Maina should take possession of that as it was what he paid. He, however, indicated that the Purchaser was unlawfully occupying both parcels.
14. It was averred that the Purchaser paid for only 4 acres; he, therefore, has no right to occupy both parcels. He stated that the Purchaser wants to occupy the parcel Nyandarua/Turasha/491, yet it is 5 acres which he did not pay for. It was contended that if the Purchaser purports to have any issue or claim over the other property that is more significant than what he bought, then that ought to be dealt with in the Environmental and Land Court, not the instant succession matter. Further, since the applicant has no opposition to the Purchaser getting the acres he purchased, then he should move to the parcel Nyandarua/ Turasha/492, which is equivalent to what he bought as evidenced in the sale agreement, and leave Nyandarua/Turasha/ 491 (5 acres) to the children of Harrison Kamande as it is rightfully theirs. It was averred that the subdivisions were done by the deceased herself, and the applicant produced the mutation in support of that position.
15. In conclusion, the Administrator prayed that t the two properties be distributed as follows:-



16. Nyandarua/ Turasha/492 measuring 4 acres to Peter Maina
17. Nyandarua/ Turasha/491 measuring 5 acres to be subdivided equally or the same be sold and proceed shared amongst all beneficiaries.
18. 1st & 2nd Protestors' Submissions
19. The Protestors submitted that from the evidence of the parties herein, it is not in dispute that one, Peter Maina Njoroge, ought to be allocated a portion of 4 acres out of the estate of the deceased, having been sold the said portion by the deceased prior to his demise. The only issue that seems to generate much heat from the Petitioner and the Protestors is whether Peter Maina Njoroge's share in the estate is from the parcel of land number Nyandarua/Turasha/491 or 492.
20. It was asserted that from the evidence of both the 1st and 2nd Protestors as well as that of Peter Maina Njoroge, he has been in occupation of the parcel of land number Nyandarua/Turasha/ 491 from the time he purchased the land, and it was subdivided way back in 1998. From the list of documents dated 24 January 2023 and the documents produced therein as Protestors' exhibits 1 to 9, the 1st and 2nd Protestors have clearly demonstrated that Peter Maina Njoroge has been and is in occupation of the parcel of land number Nyandarua/Turasha/491.
21. Further, it was submitted that the sale agreements produced herein clearly show that the parcel that was sold to Peter Maina was parcel No. 491. Further, the Chief's letter dated 16/3/2012, produced as Objectors' exhibit 5, clearly confirms the position that he occupies a parcel of land number 491.
22. The Protestors contended that when they filed their summons for revocation of grant dated 13 October 2016 in Nakuru High Court Misc. 41 of 2016, which was later transferred to this court and formed these proceedings herein, they annexed a copy of the search certificate for parcel number Nyandarua/Turasha/491 as annexure DW13 dated 4 July 2013, which clearly indicated the area of that land as 1.63 Hectares which translates to 4 acres.
23. It was argued that although the Petitioner claims that parcel of land number 491 is five acres, he did not produce any other search to discredit this one that was produced by the Protestors as well as Peter Maina Njoroge, which clearly demonstrates that parcel number 491 measures exactly 4 acres and that is what the Purchaser is entitled to.
24. It was contended that the Petitioner's submissions seem to suggest that Peter Maina Njoroge's claims over and above what he bought are not factual nor correct. Should a survey exercise be carried out and establish that parcel of land number 491 is on the ground more significant than 4 acres, he has clearly testified and indicated that his claim in the estate is for only 4 acres that he occupies on the said parcel number 491, and any excess can go to the other heirs of the estate.
25. The Protestors submitted that the claim by the 3rd Protestor to the estate of the deceased is untenable in law. That both the said Harrison Kamande and Njambi Kamande are deceased and that no grant of letters of administration in respect to their estates issued to the 3rd Protestor was ever produced to grant him any locus standi to stake a claim over the estate on their behalf. Further, in terms of the degree of consanguinity, a grandson does not rank in priority over the surviving children of the deceased.
26. It was also asserted that in his Affidavit of Protest, the 3rd Protestor claimed in paragraph 7 that his father had bought the land from his great-grandmother, but no documents to support this claim were ever produced. He also claims in paragraph 11 thereof that his father preceded his great-grandmother, and to that extent, he cannot lay any claims to the estate of the deceased as, at the time the deceased passed away, she was not survived by the 3rd Protestor's father, who had died way before him.



27. They alleged that from both the pleadings filed by the Petitioner herein as well as the 3rd Protestor, they are working in cahoots to ensure that by hook or crook, they try to defeat the Purchaser's rights and claims over the said parcel of land number 491. Further, it would appear that from the outset, the Petitioner, other than claiming the said property to himself initially and upon realizing that he could not succeed, has brought in the 3rd Protestor to stake claim over the same.
28. Turning to a parcel of land number Nyandarua/Turasha/492, the Protestors submitted that the court should uphold the 1st and 2nd Protestors Protest and grant the same to the two of them to share equally.
29. It was argued that the Petitioner seems to have been changing positions as regards the two properties at every stage. In his application for confirmation of grant filed herein, he proposed that the entire estate be shared and cut equally amongst himself and the two Protestors. In response to the Protest dated 14 July 2022, he changed this position entirely and proposed that the estate comprising of the two parcels of land should be distributed to the 3 Protestors for parcel 401 and for parcel 492 to go to Peter Maina Njoroge. It was stated that from this response, it is clear that he was not claiming any part of the estate and that he had clearly renounced his interests and claims over the entire estate.
30. It was also asserted that the evidence of the 1st and 2nd Protestors is uncontroverted, that the Petitioner had been granted a portion of 36 acres by the deceased prior to his demise, and that this portion comprised in parcel number 492 measuring 5 acres had Been Reserved For The 1st And 2nd Protestors.

Analysis and Determination

31. I have considered the pleadings filed, the evidence adduced, and submissions filed by parties herein, and the main issue for determination is the mode of distribution to be adopted by this court.
32. From the evidence on record, the land parcels that are in contest amongst the parties herein are Nyandarua/ Turasha/491 and Nyandarua/ Turasha/492, both belonging to the deceased. Both the Administrator and the 1st and 2nd Protestor admitted in court that Peter Maina Njoroge, the Purchaser hereinafter, had bought land from their deceased mother, although they could not agree on which parcel he should occupy. From the evidence on record, it is evident that Peter was occupied with parcel no. Nyandarua/ Turasha/491. From the sale agreement between the purchase and the deceased that was adduced in evidence, it appears that he purchased 4 acres from the deceased back in 1998. The 4 acres were situated partly on parcel no. 491 and 492, i.e., 3 ½ acres on parcel 491 and ½ acre on parcel no. 492.
33. On the other hand, the Administrator argued that the Purchaser should occupy parcel no. 492 because it was 4 acres, while 492 was 5 acres. Notably, the Purchaser stated that he had bought 4 acres, and that was what he was claiming; therefore, the Administrator's assertions that he wanted to benefit from 5 acres unfairly were falsehoods. I also find it highly unfair to relocate the Purchaser to land that he did not purchase, as argued by the Administrator. It is my opinion that the Purchaser, having bought the land from the deceased for consideration, should get exactly what he purchased.
34. From the search certificates filed in court with respect to the land parcels, it appears that Nyandarua/ Turasha/491 is approximately 1.63ha, and Nyandarua/ Turasha/492 is approximately 1.51ha from my estimation that is 4.02 acres and 3.73 acres, respectively. However, it appears that the Protestors and the Administrators were not in agreement as to the measurements of these parcels, particularly parcel no. Nyandarua/ Turasha/491. The Administrator did not provide any evidence to support his claims that parcel no. 491 was 5 acres, as he asserted, and therefore, I shall go by the measurements as



mentioned earlier. Notwithstanding, the Administrator is at liberty to engage a Government Surveyor at his own cost to ascertain his claims.

35. Accordingly, it is my considered finding that the Purchaser shall benefit from the 3 ½ acre of land that he has been in occupation of from parcel no. 491 and ½ acre from parcel no. 492 as per his sale agreement with the deceased. Had the parties been in agreement, this court would have preferred that the Purchaser occupy parcel no. 491, leaving parcel 492 for distribution, but the aforesaid orders shall suffice.
36. That being the case, approximately ½ acre from parcel no. 491 and 3.2 acres from parcel 492 remain for distribution. At this juncture, I will address the 3rd Protestor's Protest. Evans Muindi Mwangi asserted that he was the deceased's grandson and prayed that parcel no. Four hundred ninety-one ought to be given to him. He stated that he was the son of Harrison Kamande, who was the son of Njambi Kamande, the deceased's daughter. Essentially, the 3rd Protestor was the deceased's great-grandson. He lay claim on parcel no. 491 asserting that it was supposed to go to his father, who was the deceased's grandson who had also passed away. He even asserted that his father had bought parcel no—491 from the deceased. The 3rd Protestor did not adduce any iota of evidence to support his claims.
37. Interestingly, the Administrator, who I note, has changed his position several times regarding how the deceased's estate should be distributed. At one point, he asserted that parcel no. Four hundred ninety-one should go to the 3rd Protestor.
38. Consequently, it is my opinion that the 3rd Protestor's claims that parcel no. His father purchased 491 and cannot stand them as they are unsubstantiated. He produced no evidence to prove his allegations. Additionally, the deceased had already sold a substantial amount of parcel no. Four hundred ninety-one to the Purchaser herein who settled on it even during her lifetime, so how then could she have sold the same piece of land to the 3rd Protestor's father, and how come he or his father laid no claim on the land during the deceased's lifetime? I do not believe that the land was either sold or given to the 3rd Protestor's father, as he alleged. Equally, taking into consideration Sections 29, 38, 39, and 66 of the *Law of Succession Act*, it is my considered opinion that the 3rd Protestor is neither a dependant nor beneficiary of the deceased, and therefore, his claim to the deceased's estate can not stand.
39. NB: I could not trace a copy of the 3rd Protestor's Protest in the record for reference purposes.
40. As a result, and upon careful consideration, it is my finding that;
 - I. The Administrator and the 1st and 2nd Protestor, being the deceased's rightful beneficiaries, should share the remaining ½ acre from parcel no. 491 and 3.2 acres from parcel 492, equally. The Purchaser shall retain 3 ½ acre from parcel no. 491 and ½ acre from parcel 492.
 - II. Each party shall bear their costs.

RULING, DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 7TH DAY OF NOVEMBER 2024

.....
C KARIUKI
JUDGE

