



REPUBLIC OF KENYA



**Nduati & 2 others v Nduati (Succession Cause 1178 of 2013)  
[2024] KEHC 14189 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14189 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 1178 OF 2013  
CW GITHUA, J  
NOVEMBER 13, 2024**

**BETWEEN**

**STANLEY NJOGU NDUATI ..... 1<sup>ST</sup> APPLICANT**

**JOHN MUIRURI NDUATI ..... 2<sup>ND</sup> APPLICANT**

**TITUS NG'ANG'A NDUATI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**PHILIP NDUNGU NDUATI ..... RESPONDENT**

**RULING**

1. In order to contextualize the application that is the subject of this ruling, it is important to give a brief background against which it was filed.
2. The three applicants and the respondent are brothers. They are the sons of the late Nduati Kanyora alias Anastasio Nduati and they were appointed as co-administrators of their late father's Estate. The court record reveals that the grant of letters of administration was issued to the applicants jointly with the respondent on 5<sup>th</sup> May 2009 and it was confirmed by the lower court on 5<sup>th</sup> March 2010.
3. The record further shows that the Estate comprised of three parcels of land namely, LR. Loc.6/Gikarangu/2400; Loc.17/Saba Saba/38 and Loc.6/Gikarangu/1700 (hereinafter the Estate properties); that distribution of the deceased's estate is now complete and titles to the share of the Estate allocated to each beneficiary have been processed and issued but are yet to be received by the deceased's five beneficiaries including the applicants as the same have been in the custody of the respondent.
4. By a Notice of Motion dated 14<sup>th</sup> May 2018, the applicants moved this court seeking that the court orders the respondent to release to them the original title deeds excised from subdivision of the Estate properties. They also prayed that costs of the application be costs in the cause.



5. In the grounds anchoring the motion and in their joint supporting affidavit sworn on 14<sup>th</sup> May 2018, the applicants averred that after confirmation of the grant, the respondent proceeded to subdivide the estate properties and processed titles to the subdivided parcels without involving any of them; that since the titles have already been issued and they are in the respondent's custody, there was a risk that he may dispose the sub-divided parcels without their knowledge rendering them homeless; that since a request to the respondents' advocates to release the titles to their advocates had been rejected, they were beseeching this court to intervene and order release of the titles to them for their safe custody.
6. In addition, the applicants claimed that the subdivision and transmission was not done in accordance with the orders on distribution of the Estate made in the certificate of confirmation of grant dated 5<sup>th</sup> March 2010 since a stranger, one Joan Muiruri Nduati was registered as a beneficiary in respect of title to LR. Loc.17/Saba Saba/38.
7. In response, the respondent swore a replying affidavit dated 15<sup>th</sup> May 2019 in which he denied all the claims made by the applicants save for the claim that he was holding all titles for the subdivided parcels. He deposed that the applicants refused to co-operate with him in the distribution of the Estate and they completely frustrated his efforts to have the subdivisions done and titles processed; that they were notified of dates set for subdivisions of the Estate properties through copy of a letter dated 21<sup>st</sup> September 2016 addressed to the County Commissioner by the Surveyors who did the sub-division but they refused to participate in the exercise except for the land in which they lived namely, LR. Loc.6/Gikarangu/2400. The said letter was annexed to the replying affidavit. He further contended that the applicants also refused to sign the transmission forms and he had to seek the court's intervention to have them signed to facilitate issuance of titles in the beneficiaries names in accordance with their respective shares as ordered in the confirmed grant dated 5<sup>th</sup> March 2010.
8. In addition, the respondent asserted that given the applicants conduct of frustrating his efforts to have the Estate distributed, he was forced to single handedly undertake the sub division and processing of titles in each of the beneficiaries' names at a total cost of Kshs.180,990 which financially drained him. He confirmed that he was not interested in selling any of the properties and he was ready to release the titles to the applicants on condition that they reimbursed him either jointly or severally the cost he incurred in transmitting the Estate properties to them. He annexed copies of receipts to prove the costs he incurred in the transmission process which were marked as "A3".
9. The 1<sup>st</sup> and 3<sup>rd</sup> Applicants swore a further affidavit dated 11<sup>th</sup> July 2019 in which they denied having been aware of the intended subdivision of the estate properties claiming that they were not served with the letter dated 21<sup>st</sup> September 2016; that the letter established the respondent's intention of subdividing the properties on his own without involving them yet they were co-administrators of the Estate; that since the respondent refused to involve them in the transmission process, they could not tell whether or not the transmission was done in accordance with the certificate of confirmation the grant.
10. . They also denied having refused to the sign transmission forms as alleged by the respondent. They expressed the view that the respondent's demand that they should refund him monies used in the transmission process was malicious since he is the one who chose to go it alone and left them out of the process.
11. . To counter the averments made by the 1<sup>st</sup> and 3<sup>rd</sup> applicants in their further affidavit, the respondent filed a further affidavit on 22<sup>nd</sup> October 2019 reiterating the depositions made in his supporting affidavit. He annexed to the affidavit an application dated 27<sup>th</sup> October 2016 filed by the applicants demonstrating that they were aware of the subdivision of the estate properties. He also annexed another



application dated 7<sup>th</sup> May 2014 in which he sought the court's intervention to have the Hon. Deputy Registrar sign the transmission forms on behalf of the applicants since they had allegedly refused to sign them to facilitate distribution of the Estate.

13. The application was canvassed by way of written submissions which the parties duly filed through their counsel on record. The submissions were highlighted before me on 12<sup>th</sup> June 2024 by the applicants who chose to proceed in person as their learned counsel Mr. Tumuti failed to attend the court. Learned counsel Ms. Muritu represented the respondent.
14. Having carefully considered the application and the numerous affidavits filed by the parties in support and in opposition to the application as well as the parties written and oral submissions, I find that it is not disputed that although the applicants and the respondent were appointed as co-administrators of their late father's Estate, the respondent had single handedly undertaken the task of distribution of the Estate which included subdivision of the estate properties and processing of titles in the beneficiaries names; that the respondent had in the process incurred costs which costs the applicants were unwilling to refund.
15. . It is also not contested that the titles subject of the instant application were in the custody of the respondents advocates since learned counsel Ms. Muritu admitted on record this fact but added that she was under instructions by the respondent not to release them until the applicants reimbursed him his costs.
16. Given the above undisputed facts, it is my finding that the only issue arising for my determination is whether the applicants ought to reimburse the respondent the costs he incurred in the transmission process as a precondition to having the titles released to them.
17. Before addressing the aforesaid issue, I wish to deal first with the applicants claim that the respondent did not distribute the estate in accordance with the orders made in the certificate of confirmation of grant as he introduced a stranger to the transmission in Loc. 17/Saba Saba/38 one Joan Muiruri Nduati. This claim was denied by the respondent.

I have perused the copy of green card annexed to the applicants supporting affidavit marked "SNN2" which is a copy of green card showing records of ownership of the aforesaid parcel of land. Whereas Joan Muiruri Nduati is listed as one of the proprietors of the said parcel of land, this appears to have been done in error as her name does not appear among the proprietors listed in the copy of certificate of official search of the aforesaid title which was annexed to their own affidavit and marked as Exhibit "SNN4".

18. That said, it is worth noting that apart from claiming that the respondent undertook the process of transmission on his own without involving them and that he unlawfully introduced a stranger to share in Loc.17/ Saba Saba /38 which claim as I have stated above was dislodged by the contents of the certificate of official search marked "SNN4", the applicants have not availed any evidence to demonstrate that distribution of the Estate was not done in accordance with the certificate of confirmation of grant dated 5<sup>th</sup> March 2010.
19. Turning now to the key issue isolated above for my determination which is whether the respondent was entitled to reimbursement of the costs incurred in executing the confirmed grant, the applicants have argued that he was not so entitled because he deliberately shut them out of the transmission process and chose to undertake the process on his own; that they have never refused to be involved and they did not at any time refuse to execute the transmission forms; that having chosen to sideline them in the distribution of the Estate, the respondent cannot now claim reimbursement of costs incurred in a task he chose to undertake on his own.



20. The respondent has maintained that he was forced to execute the certificate of confirmation of grant alone since the applicants refused to co-operate with him and frustrated his efforts to have the Estate distributed as ordered by the court; that having incurred costs in the process, he was entitled to a refund.
21. Having summarized the positions taken by the parties on the issue under consideration, I wish to point out at the outset that as co-administrators of the deceased's Estate, the applicants and the respondent were enjoined by law to jointly distribute the Estate to the rightful beneficiaries in accordance with the orders on distribution made by the court.
22. Section 83 of the *Law of Succession Act* which sets out the duties of administrators provides at Section 83 (g) that it was the duty of administrators to within six months from date of confirmation of grant or such longer period as the court may prescribe to complete distribution of an Estate and to produce to court a full and accurate account of the complete administration. This is a duty bestowed on each administrator either individually or jointly with others in situations where co-administrators are appointed.
23. Although ideally joint administrators are supposed to work together as a team when undertaking their duty of distributing an Estate, if for some reason they fail to agree on how the process of distribution ought to be undertaken or fundamental differences emerge amongst them which makes it impossible for them to work together, nothing in law bars any one of them to undertake the responsibility of initiating the process of distribution and inviting the co-administrators to get on board to play their role to have the process completed and if they refuse to co-operate, nothing stops the administrator who is minded to perform his duty aforesaid provided he does so in accordance with the law.
24. In this case, the respondent's claim that he was forced to complete the distribution of the Estate on his own since the applicants were unco-operative and frustrated his every step appears credible since it is backed by documentation in the court record. For instance, although the applicants deny that they were served with copies of a letter dated 21<sup>st</sup> September 2016 notifying them of dates of the intended sub-division of the estate properties, there is evidence that they were so notified but instead of co-operating with the respondent and participating in the exercise, they filed two applications dated 27<sup>th</sup> October 2016 and 14<sup>th</sup> August 2017 seeking to stop the subdivisions.
25. The court record also shows that there is a time they applied for revocation of the confirmed grant but their application was unsuccessful. That is why the record of the trial court was forwarded to the High Court. It is also apposite to note that the transmission documents in this case were signed by the Hon. Deputy Registrar on behalf of the applicants which amounts to evidence that the Hon. Deputy Registrar was satisfied that the applicants had refused to sign the documents.
25. I have set out the above facts to demonstrate that for reasons best known to them, the applicants were hell bent on ensuring that distribution did not take place as ordered by the court. This was confirmed by the two other beneficiaries who are not party to this application when they addressed the court on 4<sup>th</sup> October 2023. In the premises, the respondent was therefore justified in undertaking the task of distributing the estate alone.
27. It is however common knowledge that the process of transmission of an Estate is not free of charge. It involves costs like survey fees and costs associated with registration of titles including payment of stamp duty if the Estate in question comprises of parcels of land like in this case.

Having refused to co-operate with the respondent which compelled him to solely finance the entire transmission process, and there being no evidence that the Estate had any income which would have been utilized to defray the transmission expenses or to refund monies expended by the respondent, the



applicants and the other two beneficiaries had an obligation to contribute towards payment of the said expenses proportionate to their shares.

28. The respondent exhibited copies of receipts to prove the costs he incurred in the process of transmission on behalf of the Estate and its beneficiaries. I have taken the trouble to calculate the amounts stated in those receipts and according to my arithmetic, the amount totals to Kshs.168,980 and not Kshs.180,890 as claimed by the respondent.
29. I also note from the record that the trial court had on 25<sup>th</sup> May 2021 issued an order directing the parties to share costs of distribution of the Estate which costs were to be agreed upon or assessed by the court. I did not come across any indication on the court record that this order was ever varied, stayed or set aside.
30. When the parties appeared before me on 4<sup>th</sup> October 2023 and the court was encouraging them to consider an out of court settlement, the two beneficiaries who are not parties to this application, namely, Mary Wanjiru and Adolf Karanja informed the court that they were ready to refund to the respondent their share of the transmission costs. The respondents vehemently refused and surprisingly, they proceeded to invite the court to revoke the grant and order that title to the estate properties be reverted to the deceased so that distribution could start afresh.
31. I must admit that I was taken aback by that invitation given the age of this succession cause and the progress already made. The cause was filed in the lower court in the year 2005 and the parties are still litigating to date. In my view, if the applicants were still interested in having the grant revoked even after failing in their previous attempt despite being aware that transmission of the estate was now complete and what was remaining was just accessing titles for their share of the Estate, their interest reasonably calls to question their bonafides in having this protracted family dispute finally resolved. Be that as it may, this court cannot entertain their prayer in the context of the current application.
32. Given the foregoing, it is my finding that having shouldered the burden of financing distribution of the Estate alone, there being no evidence that there was any income from the Estate that can be applied to refund his expenditure, it was only fair and just that the respondent, be reimbursed the cost he incurred on behalf of the estate by the other five beneficiaries including the applicants.
33. Under Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules which confers on this court inherent powers to make any orders that are necessary to meet the ends of justice and considering the respondent Counsel's admission that she was the one having custody of the titles subject of this application, I find that the only order that I can make that would meet the ends of justice in this case is an order allowing the application on terms that the respondents counsel shall release the titles to the applicants and other beneficiaries upon payment of their share of the transmission costs incurred by the respondent.
34. For the avoidance of doubt, the total cost to be reimbursed is Kshs.168,980 and not Kshs.180,890 as claimed by the respondent. Since the beneficiaries were allocated equal shares of the estate, each beneficiary's share of the cost translates to kshs.28, 163 which is the sum a beneficiary will pay to the respondent's advocates for onward transmission to the respondent in order to have title registered in his or her name released.
35. Though as a general rule costs follow the event, given the outcome of this application and this being a family matter, each party shall bear his own costs.
36. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2024.**



**HON. C.W. GITHUA**

**JUDGE**

In the presence of:

The applicants in person .

The respondent and his counsel Ms. Muritu

Ms. Susan Waiganjo, court Assistant

No Appearance for Mr. Tumuti

