



**In re Estate of Simon Nguti Kimii (Deceased) (Succession Cause
33 of 1991) [2024] KEHC 15662 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 33 OF 1991**

MW MUIGAI, J

DECEMBER 9, 2024

**IN THE MATTER OF THE ESTATE OF SIMON NGUTI
KIMII(DECEASED)**

BETWEEN

RUTH NDUNGE MUTISO APPLICANT

AND

TITUS MUSYOKI NGUTI RESPONDENT

RULING

1. Vide a petition received in which the petitioners Titus Musyoki Nguti and John Mutiso Nguti petitioned this Honorable Court for a grant of Letters of Administration intestate of the estate of Simon Nguti Kimii (deceased) who died on 9th April 1989 as per death certificate and domiciled in Kenya.
2. Pursuant to the Affidavit in support of the said Petition for Letters of Administration Intestate, the deceased died intestate and left the following surviving him; -
 - a. Serah Mutindi Nguti- Widow (deceased)
 - b. John Mutiso Nguti- Son (deceased) (Ruth Ndunge widow)
 - c. Titus Musyoki Nguti- Son
 - d. Joseph Muthiani Nguti- Son- (deceased) (no family)
 - e. Davis Muema Nguti- Son (deceased) (Widow- Agnes Mutinda Muema & 3 children)
 - f. Ruth Mwikali Nguti daughter (was left out of the list and not included)
 - g. Liz Mumbua Nzimbi daughter (was left out of the list and not included)



3. The Affidavit in Support of Petition for Letters of Administration Intestate mentioned properties and/or assets left by the deceased at the date of his death as follows:
 1. Plot No 36 Kilala Market
 2. Plot No 37 Kilala Market
 3. Okia/Kilala/161
 4. Okia/Kilala/212
4. The total estimated value of the estate of deceased was Kshs. 500,000.00/=.
5. Vide the Gazette notice dated 24th June 1991, John Mutiso Nguti & Titus Musyoki Nguti the deceased's sons were gazetted for grant of Letters of Administration intestate.
6. Grant for Letters of Administration granted and issued by this Honorable Court on 24th February 2023 to Titus Musyoki Nguti as personal representative of the deceased's estate .

Summons for Confirmation of Grant

7. Pursuant to Summons for Confirmation of Grant dated 11th April 2023, the Applicant sought orders for the grant of letters of administration granted on 18th March, 2016 made to Titus Musyoki Nguti be confirmed.
8. He deposed that the parcel of land Plot No 36 Kilala market to be jointly registered jointly in the names of first family, second family third family, plot No 37 Kilala Market be registered in first family, second family and third family, Land title No Okia/Kilala/161 2.55 hectares be registered in the name of Simon Syuki Mutiso, Peter Ndambuki John and Joseph Ngungi Mutiso
9. Consent to Confirmation of grant was signed by Louise Kaluki, Julius Nthoka Katemi Nguti, Anne Muthoki Nguti, Simon Syuki Mutiso, Peter Ndambuki John, Joseph Ngungi Mutiso, Agnes Mutindi Muema, Simon Nguti Muema, John Muasa Muema and James Nyumu Muema.

Affidavit Of Protest Against Confirmation Of Grant And On Distribution.

10. By the Affidavit of Protest against Confirmation of Grant and on distribution dated 2nd November 2023 and filed in court on 3rd November 2023, sworn by Ruth Mwikali Nguti, the Protestor herein, wherein, she deposed that she is the daughter of the deceased. She contends that the deceased was survived by the following: Liz Mumbua Nzimbi- daughter (deceased) Beatrice Syokau Ngumbau daughter-deceased Joseph Muthiani Nguti-Son (deceased) John Mutiso Nguti –Son (deceased) Titus Musyoki Nguti –son Ruth Mwikali Nguti David Muema Nguti - deceased
11. Depositing that the process of administration of this succession has been characterized by secrecy, illegality and unfairness. That all her brothers and sisters who have passed have children except Joseph Muthiani Nguti have children and dependants and it would be unfair to deny them a share of their ancestral land.
12. She deposed further that the Petitioner did not involve her in the court proceedings and has never consented to any mode of distribution and that the administrator Titus was given grant of administration concealing existence of some family members including her.
13. She deposed further that the mode of distribution is completely unjust, unequitable, unacceptable and unfair and is tainted with concealment of facts. The attached consent in the application is a forgery.



14. That his brother Titus Musyoki has been intermeddling with the estate, he has unilaterally leased out Plot number 36 Kilala market which was part of their ancestral land to Safaricom Limited for booster network setup. All the proceeds of the aforesaid lease agreement have not been disclosed nor shared to other family members. That it is evident that the administrator cannot be trusted and that in that regard she should be added as a joint administrator.
15. That the court to order for the deceased properties to be shared equally among the six families
16. That the court to distribute the estate upholding the principles of fairness and justice for all parties.

Affidavit of Protest of Confirmation of Grant by Manases Mutuku

17. In the Affidavit of Protest dated 22nd July 2024, sworn by Manases Mutuku Munywoki, who deposed that the deceased herein was his grandfather as he is son to the protester and that her mother was discriminated on account of gender by the administrator Titus Musyoki and has been threatened and forced to accept tokens.
18. He Deposed that the administrator has promised his mother the sum of Kshs 600,000 with the aim of depriving them of their rightful share and that the children of their mother's sisters Liz Mumbua Nzimbi and Beatrice Syokau have their ancestral land from their father and that his uncle's children are entitled to their father's shares and it would be totally unfair to deny them a fair share of their ancestral land.
19. That it was not in dispute that the beneficiaries to the state are the four families and the deceased assets were not in dispute.
20. That the two plots in Kilala Market be sold and the proceeds be shared equally among the four families.
21. He deposed further that he was not involved in the court proceedings and has never consented to any mode of distribution and that the administrator Titus was given grant of administration concealing existence of some family members including his mother.
22. He deposed further that the mode of distribution is completely unjust, unequitable, unacceptable and unfair and is tainted with concealment of facts. The attached consent in the application is a forgery.
23. That his uncle Titus Musyoki has been intermeddling with the estate, he has unilaterally leased out Plot number 36 Kilala market which was part of their ancestral land to Safaricom Limited for booster network setup. All the proceeds of the aforesaid lease agreement have not been disclosed nor shared to other family members. That it is evident that the administrator cannot be trusted and that in that regard Ruth Ndunge Mutiso the widow of the late John Mutiso be appointed as one of the administrators to secure her interest.
24. That the court to order for the deceased properties to be shared equally among the four families
25. That the court to distribute the estate upholding the principles of fairness and justice for all parties.

Summons for Revocation or Annulment of Grant

26. In the Summons for revocation dated 24th April 2024, the Protestor deposed that the letters of administrator issued to Titus Musyoki Nguti be rectified, revoked and or annulled. That the court appoint the applicant Ruth Ndunge Mutiso be appointed as joint administrator in the estate of the late Simon Nguti and that the administrator be ordered to produce a full and accurate inventory of all assets and liabilities of the deceased's estate and their dealings in full and accurate account of proceeds and



- bank statements of lease agreements between the estate of the late Simon Nguti Kimii and Safaricom Limited over the Safaricom booster in plot no 36.
27. She contends that she is the daughter in law of the deceased. that the children of their mother's sisters Liz Mumbua Nzimbi and Beatrice Syokau have their ancestral land from their father and that his uncle's children are entitled to their father's shares and it would be totally unfair to deny them a fair share of their ancestral land.
 28. That the court do compel the administrator to share the account statement where the money for Safaricom lease is remitted to enable the court make an order for equal sharing of the funds by the four families and that she be appointed as one of the administrators to replace her deceased husband to secure his interest.
 29. That the court to order for the deceased properties to be shared equally among the four families
 30. That the court to distribute the estate upholding the principles of fairness and justice for all parties.

Replying Affidavit

31. Via replying affidavit dated 12th August 2024 sworn by Titus Musyoki who deponed that the applicant cohabited with his brother John Mutiso and got 3 children however the cohabitation lasted for 26 years and no formal marriage crystalized between them and since then she cut ties with the family and only resurfaced long after John Mutiso died in 2021. The protestor went into other relationships and even sired other children outside their family.
32. That during the lifetime of the deceased, he showed each son where to settle with family and that's where they have settled and disturbing the status quo would greatly inconvenience the family and go against the wishes of the deceased. that the firstborn son was allocated land parcel no Okia/Kilala/165 and the remaining portion was allocated to John Mutiso, he was given land parcel Okia/ Kilala/212 and the remaining portion to David Muema Nguti.
33. That Joseph Nguti died and left no family and thus his portion reverted back to the estate and they agreed to build an institution on the said land. That John Mutiso's first born son lives on the land parcel Okia/Kilala/161 and it was agreed that he holds it in trust for his siblings and mother.
34. It was deposed that land parcel No Okia/Kilala/212 which he was to share with his brother who is deceased and left a family and they have agreed on a sharing formula and with regard Plot Nos 36 and 37 Kilala Market, the other families are in agreement that the same be registered in the four names of each family nominee and that each family get a unit for use/rent to a willing tenant.
35. That since 2019 to date, the records of the bank transactions have been kept up to date and all the family members have been updated and satisfied and that they have a pre existing formula of how the rent proceeds are shared. That the protestor failed to sign the mediation settlement agreements and that they proposed that the deceased estate be distributed in accordance with the mediation settlement agreement filed in court on 11/6/2024.
36. He contended that Ruth Mwikali Nguti has now been given an equal share of the estate herein and is in agreement with the proposed mode of distribution
37. That each family has got a share of estate and it would be drastic measure to call for revocation of grant herein.
38. The matter was canvassed by written submissions.



Submissions

Protestor's submissions

39. Protester in her submissions dated 12th August, 2024 wherein, she raised the following issue for determination.
 1. Whether the deceased assets should be divided equally among the four families
 2. Whether the administrator had intermeddled with the Estate of the deceased
 3. Whether a joint administrator should be appointed
 4. Whether the administrator should be compelled to account for the proceeds received in relation to lease agreement with safaricom limited regarding plot no 36.
40. On the first issue she submitted the court should order subdivision of the deceased assets into 4 equal portions. Each family get 10 acres and that the two plots in Kilala market be sold and the proceeds shared equally in four portions.
41. On intermeddling reliance was placed in the case of Veronica Njoki Wakagoto (deceased) [2013] eKLR and submitted that the administrator Titus has been intermeddling with the estate. He has leased out Plot no 36 to Safaricom for booster network. It is submitted that the court should find that , leasing out, changing the user and disposing off the deceased estate without confirmation amounts to intermeddling hence illegal.
42. On the third issue, it was submitted that due to the confirmed intermeddling, the administrator cannot be trusted to administer the estate properly and thus Ruth Ndunge Mutiso should be added as a joint administrator as she was the wife of John Mutiso deceased who was an administrator
43. On the 4th issue it was submitted that the court compel the administrator to share with the court the account statement where the money for Safaricom lease is remitted to enable the court to make an order for equal sharing of the funds by the four families.
44. It was their final request that the court order the deceased properties to be shared equally among the 4 families as in the case of Re Estate of Chesimbili Sindani (deceased) [2021eKLR].

Administrator's/Respondent's Submissions

45. It was submitted that the issues for determination are whether the grant of letters administration should be revoked, the proper mode of distribution and whether the applicant and her children with John Mutiso have been fairly and sufficiently provided for in the proposed mode of distribution.
46. It was his case that Section 76 of the Law of Succession provides grounds for revocation. That the applicant cohabited with his brother John Mutiso and got 3 children however the cohabitation lasted for 26 years and no formal marriage crystalized between them and since then she cut ties with the family and only resurfaced long after John Mutiso died in 2021. The protestor went into other relationships and even sired other children outside their family.
47. Reliance was placed in the case of Mary Wanjiku Gachigi v Ruth Muthoni Kimani [2003] eKLR and the case of MNK v POM and that the applicant had not demonstrated she was married to John Mutiso so as to have a viable interest in the Estate and that being a daughter in law that she does not rank higher in priority to the children of the deceased.



48. He relied on Section 66 of the *Law of Succession Act* and the case of Re Estate of Peter Alusiola MulaMula (deceased) and that the applicant has not demonstrated sufficient grounds to revoke the grant of the subject estate.
49. On mode of distribution it was submitted that the administrator's proposed mode of distribution in paragraph 27 of his replying affidavit qualifies the deceased wishes as how he intended his properties to be distributed and as agreed on the court annexed mediation sessions.
50. Reliance was placed in the case of Re estate of Anthony Mugo Mwai (deceased)(Succession Cause 39 of 2017) [2023] and the case of Re Late Marogo A Magun (deceased) [2019] eKLR.
51. It was submitted that the Administrator's proposed mode of distribution has taken into account the relevant factors and is just and fair in the circumstances.
52. It was submitted that only the Applicant's children with the deceased's son are beneficiaries to the estate by virtue of being grandchildren. He relied on the case of Estate of Florence Mukami Kinyua (deceased) [2018]

Determination/Analysis

53. The Court considered the Summons for confirmation of grant, the affidavit of protests and the corresponding affidavits as well as the submissions that have been filed by the parties. I find that the issues for determination are;
 - a. Whether the grant of letters of administration should be revoked.
 - b. What mode of distribution should be adopted.
54. I note that it is not in dispute that the deceased herein left the following heirs;
 - Liz Mumbua Nzimbi- daughter (deceased)
 - Beatrice Syokau Ngumbau daughter-deceased
 - Joseph Muthiani Nguti-Son (deceased)
 - John Mutiso Nguti –Son (deceased)
 - Titus Musyoki Nguti –son
 - Ruth Mwikali Nguti- daughter
 - David Muema Nguti – deceased
55. Section 76 of the *Law of Succession Act* is a proviso on the grounds upon which a grant can be revoked or annulled. It provides thus;
 - “ A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
 - (a) that the proceedings to obtain the grant were defective in substance;
 - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;



- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

56. This section was discussed in *re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

57. In this case, the protest is based on the fact that the Petitioner has been intermeddling with the estate of the deceased and thus cannot be trusted to be a sole administrator. The wife of the co administrator John Mutiso who is deceased alleged that she should be substituted in order to guard the interest of the deceased in the estate. The Administrator contested the widow of John Mutiso appointment as Co-Administrator and alleged that after her husband’s death she came back as she had left and had children elsewhere.

58. Section 66 of the *Law of Succession Act*, provides preference to be given to certain persons to administer deceased’s estate where the deceased died intestate and provides that the court shall, save as otherwise expressly provided, have final discretion as to the person or persons to whom a grant of letters of



administration shall, in the best interest of all concerned, be made, but shall without prejudice to that discretion, accept as a general guide the order of preference as set out in the aforesaid section. Section 66(a)-(d) provides: -

- “ 66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-
- (a) surviving spouse or spouses, with or without association of other beneficiaries;
 - (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - (c) the Public Trustee; and
 - (d) creditors”

59. In this case I note that the applicant is the daughter in law of the deceased by virtue of having been married to the deceased son John Mutiso had sired children. However looking at the provisions of Section 76 of the *Law of Succession Act*, the applicant has not demonstrated/ proved any of the grounds provided to warrant a revocation and Section 66 of the *Law of Succession Act*, the applicant being a daughter in law ranks lower in the degree of consanguinity to administer the estate of the deceased.
60. I find that the protestor has not fulfilled any of the grounds of Section 76 of *Law of Succession Act*. Section 66 LSA mandates the Court to appoint Administrator, in this case Titus Musyoki Nguti –son & Ruth Mwikali Nguti- daughter of the deceased shall be Co Administrators of the deceased estate as the 2 remaining surviving children of the deceased.

Distribution of the Estate

61. The second issue that is in contest is what mode of distribution is fair and just in the circumstances.
62. It is not in dispute that the deceased properties are
- Plot No 36 Kilala Market
 - Plot No 37 Kilala Market
 - Okia/Kilala/161
 - Okia/Kilala/212
- Protestors
- The Protestors are Ruth Mwikali Nguti daughter of the deceased Ruth Ndunge Mutiso widow of John Mutiso son of deceased Manases Mutuku Munyowki, grandson to deceased son of Ruth Mwikali Nguti.
63. There are competing interests those of the protestors on one side and those of the administrators on distribution of the estate of the deceased.
64. The protestor deposed that that the process of administration of this succession has been characterized by secrecy, illegality and unfairness. That all her brothers and sisters who have passed on, have children



except Joseph Muthiani Nguti and dependants and it would be unfair to deny them a share of their ancestral land.

65. She deposed further that the Petitioner did not involve her in the court proceedings and has never consented to any mode of distribution and that the administrator Titus was given grant of administration concealing existence of some family members including her.
66. She deposed further that the mode of distribution is completely unjust, unequitable, unacceptable and unfair and is tainted with concealment of facts.
67. The administrator on the other hand averred that during the lifetime of the deceased, he showed each son where to settle with family and that's where they have settled and disturbing the status quo would greatly inconvenience the family and go against the wishes of the deceased. that the firstborn son was allocated land parcel no Okia/Kilala/165 and the remaining portion was allocated to John Mutiso, he was given land parcel Okia/ Kilala/212 and the remaining portion to David Muema Nguti.
68. That Joseph Nguti died and left no family and thus his portion reverted back to the estate and they agreed to build an institution on the said land. That John Mutiso's first born son lives on the land parcel Okia/Kilala/161 and it was agreed that he holds it in trust for his siblings and mother.
69. At this juncture, I find that there are a lot of conflicting information that can only be substantiated through hearing. I take note that the parties have gone through negotiations and Court annexed Mediation process that the Mediation Settlement Agreement was recanted before the Court could adopt it as an order of the Court, which seemed to have bore no tangible settlement.
70. The Court also notes with concern that the Protestors have outlined 4 families or houses contrary to the widow and children of the deceased outlined in the petition filed on 3/4/1991. It is curious to note that the 4 families consist of grandchildren of deceased and daughter in laws. With respect, the widow of the deceased son shall administer only her late husband's share of deceased's estate with their children. Similarly, the grand children can only step into the shoes of their parents and obtain their parents share upon proof of parents demise.
71. In re Estate of Imoli Luhitse Paul (Deceased) [2021] eKLR, the Trial Court; Hon W.Musyoka J stated of right of grandchild/ren;

In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of In re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR (Musyoka J) and In re Estate of Florence Mukami Kinyua (Deceased) [2018] eKLR (T. Matheka J), and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the Law of Succession Act cover these situations. Section 39 of the Law of Succession Act makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the Law of Succession Act is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.

I believe that there is a misconception. Grandchildren are not in the same footing with the daughters-in-law or children-in-law of the deceased. Grandchildren would be blood relatives of the deceased. They would be entitled automatically, as blood kin of their grandparent, to take the share due to their own parents, the biological children of the deceased, where such biological children are dead. A surviving spouse of a dead child of the deceased is not a biological kin of the deceased parent-in-law. Such a child-in-law would have no automatic



right or entitlement to a share in the estate of her parent-in-law. Whereas statute is clear that grandchildren have a right under sections 39 and 41 of the Law of Succession Act, there is not a single provision in the Law of Succession Act, or any other statute for that matter, which makes provision for any in-law.

72. Therefore, the estate of the deceased shall be shared amongst children of the deceased as listed above in the Petition including those left out- daughters as in 1989 the Constitution 2010 was not in place that made all persons free from discrimination and enjoy equal benefit and protection of the law by virtue of Article 27 of Constitution 2010.

Beneficiaries

- a. Serah Mutindi Nguti- Widow (deceased)
 - b. John Mutiso Nguti- Son (deceased) (Ruth Ndunge widow)
 - c. Titus Musyoki Nguti- Son
 - d. Joseph Muthiani Nguti- Son- (deceased) (no family)
 - e. Davis Muema Nguti- Son (deceased) (Widow- Agnes Mutinda Muema & 3 children)
 - f. Ruth Mwikali Nguti daughter (was left out of the list and not included)
 - g. Liz Mumbua Nzimbi daughter (was left out of the list and not included)
73. Where the daughter or son is deceased the widow and/or children, now grandchildren shall be entitled to the share of their parent's entitlement to the estate.

Disposition

1. The Summons for Revocation application is dismissed Section 76 LSA not proved by evidence on record.
2. The Grant shall be rectified to have 2 Administrators – surviving children of deceased appointed by this Court under Section 66 LSA namely
Titus Musyoki Nguti –son
Ruth Mwikali Nguti- daughter
3. The grandchildren of the deceased shall be part of the distribution of deceased's estate where their parents are deceased and obtain their parent's share
4. The distribution of the estate of the deceased shall be on the following properties.
Plot No 36 Kilala Market
Plot No 37 Kilala Market
Okia/Kilala/161
Okia/Kilala/212
5. The Protests are upheld to extent that the Daughter and widow and grandchildren are included as beneficiaries where parents are deceased to seek and obtain parent's share only.



6. The Beneficiaries and Administrators shall distribute the properties that comprise of deceased's estate equally/equitably in the absence of any agreement and/or written consents on the proposed mode of distribution.

JUDGMENT DELIVERED DATED & SIGNED IN OPEN COURT ON 9/12/2024 IN MACHAKOS HIGH COURT. (VIRTUAL/PHYSICAL CONFERENCE).

M.W.MUIGAI

JUDGE

In the presence of:

Mr. Kyalo for The Administrator

Mr. Masue for The Protestor

Geoffrey – Court Assistant

Mr. Kyalo: We wish to exercise our right of Appeal.

Court: Right of Appeal granted.

M.W.MUIGAI

JUDGE

