



REPUBLIC OF KENYA



**In re Estate of Zakayo Mugo Muratha alias Zakayo Mugo Mbugua (Deceased) (Succession Cause 1013 of 2009) [2024] KEHC 15266 (KLR) (Family) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15266 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1013 OF 2009  
HK CHEMITEI, J  
DECEMBER 5, 2024  
IN THE MATTER OF THE ESTATE OF ZAKAYO MUGO  
MURATHA ALIAS ZAKAYO MUGO MBUGUA (DECEASED)**

**BETWEEN**

**MERCY NJERI MUGO ..... APPLICANT**

**AND**

**DAVID MURATHA MUGO ..... 1<sup>ST</sup> RESPONDENT**

**ALPHAS KAHIRA MUGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling relates to the application dated 15<sup>th</sup> January, 2024 filed by Mercy Njeri Mugo seeking for orders that:-
  - (a) The Administrators/Respondents herein be ordered to account for all rent collected from ½ share of the property known as Dagoretti/Kangemi/240 situated in Kangemi from January 2012 to date.
  - (b) The Administrators/Respondents herein be ordered to remit to the Applicant her share of the monthly income from the ½ share of the property known as Dagoretti/Kangemi/240 situated in Kangemi from January 2012 to date.
  - (c) That the grant issued to David Muratha Mugo be revoked and the same be issued to Mercy Njeri Mugo, the Applicant herein.
2. The application is supported by affidavit sworn by Mercy Njeri Mugo on 17<sup>th</sup> January, 2024. She avers inter alia that the deceased was her grandfather and she is the sole beneficiary of her mother's estate –



Grace Wangui Mugo (deceased) who was the deceased's daughter and a beneficiary of his estate. The administrators were issued with a grant of letters of administration in 2009 and the same was confirmed on 28<sup>th</sup> January, 2014. Since then, they have not distributed the deceased's estate for the period which they have been administrators.

3. That they have been collecting rent from the deceased's estate and mismanaging it. They remitted her mother's share to her when she was alive but stopped when she died.
4. On 5<sup>th</sup> August, 2023, it was agreed at a family meeting that her mother's share would be remitted to her but the administrators have failed to do so. The administrators filed an application for rectification of grant and apportioned her mother's share to another beneficiary without her knowledge thus disinheriting her. They have also declined to rectify her wrongly captured name.
5. The application is unopposed and no submissions have been filed.

### **Analysis And Determination**

6. In the case of *Gideon Sitelu Konchellah vs. Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR the Supreme Court of Kenya held that:-

“...as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court...”

7. Based on the above cited authority and in view of the history of this matter and the fact that the Respondents did not oppose the application it is only fair that they provide the accounts from the period requested by the Applicant. Thereafter the court will deal with the rest of the prayers.
8. Directing that the grant be revoked at this level may not be efficacious and may simply delay the finalization of the matter. What is at stake at the moment is execution of the confirmed grant.
9. In the premises the application is allowed as follows:-
  - (a) The Respondents are hereby directed to provide and file in court the estates accounts for the period between January 28, 2014 to date within 30 days from the date herein.
  - (b) In default of prayer (a) above the Applicant to take out contempt proceedings against the Respondents jointly and severally.
  - (c) Costs to the Applicant.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER 2024.**

**H K CHEMITEI**

**JUDGE**

