



**In re Estate of Justus Buuri (Deceased) (Succession Cause
111 of 2019) [2024] KEMC 90 (KLR) (26 January 2024) (Judgment)**

Neutral citation: [2024] KEMC 90 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
SUCCESSION CAUSE 111 OF 2019
AT SITATI, SPM
JANUARY 26, 2024
IN THE MATTER OF THE ESTATE OF JUSTUS BUURI (DECEASED)**

BETWEEN

NAOMI MUKIRI BUURI 1ST PETITIONER

ARNOLD MUTUMA BUURI 2ND PETITIONER

AND

MARTIN KABORI BUURI OBJECTOR

JUDGMENT

1. On 6th December, 2019 the Court granted Letters of Administration intestate to the above-named 2 petitioners who are widow and son of the deceased herein. Thereafter, on 16th November, 20022 the petitioners lodged Summons for the Confirmation of Grant supported by affidavit of similar date where they proposed the following distribution ratio: All the beneficiaries to inherit 0.63acres each which represents equal shares from the following parcels of land:
 1. Abothuguchi/Kithirune/3511
 2. Abothuguchi/Kithirune/3512
 3. Abothuguchi/Kithirune/3513
 4. Abothuguchi/Kithirune/3514
 5. Abothuguchi/Kithirune/3515
2. On 24th May, 2023 Martin Kabori Buuri, one of the deceased's sons, filed a Protest to object to the proposed distribution of the estate by the Administratrix and Administrator. His objection was supported by an affidavit of similar date. He contended that months prior to his demise, their deceased father had shown the Objector and his younger brother their portions of land and indicated how



each child and their mother were to inherit should he pass away. He wrote his wishes to capture the intended distribution and handed it to the current Administratrix who had no objections to the said intentions of the deceased. To give effect to his intentions, the deceased father subdivided the original land Abothuguchi/Kithirune/150 measuring approximately 5 acres into numbers 3511, 3512, 3513, 3514 and 3515 for which he successfully obtained the Land Control Board Consent. He then specified that the new numbers should be inherited as follows respectively:

- a. 3511: Naomi Mukiri and her daughters
 - b. 3512: Arnold Mutuma Buuri
 - c. 3513: Martin Mwirigi – the Objector
 - d. 3514: Ephraim Kirimi – his widow Purity Makena and her children to inherit.
 - e. 3515: Amos Koome Buuri
3. In support of his objection were filed 2 witnesses' statements of Purity Makena and Koome Amos Buuri who both affirmed this state of affairs. The 2 witnesses told the court that their mother concealed the existence of the succession cause from them with a view to go against the clear wishes of their father.
4. In cross-examination, the following came to light:
1. The Objector was summoned by his deceased father and he travelled from Nakuru to the rural home whereupon the now deceased father marked out the portions to be inherited by his wife and children.
 2. The land marking exercise was done while the Administratrix was asleep and when she woke up she protested but the father overruled her objections.
 3. After overruling the objections by the Administratrix, the father went ahead to subdivide the land into 5 portions and earmarked each portion as earlier recorded in the evidence.
 4. The purported handwritten notes of the deceased that the mother had carried to court were disputable on account of the signatures and type of book.
 5. The Administratrix undertook the current succession proceedings secretly and it was only when the court administrator directly contacted the parties listed in the petition that the beneficiaries learnt of the existence of this case.
 6. The proposed distribution by the Administratrix would disinherit the widow and children of Ephraim Kirimi yet the deceased Justus had shown the firstborn of Ephraim their portion following the demise of Ephraim.
5. In re-examination, it was affirmed that when the deceased went to the Land Control Board to obtain the subdivision consent, all the children were present and all consented to the 5-way apportionment of the land.
6. The Administratrix opposed the application. She filed a statement dated 22nd June, 2021 informing the court that she got married to the deceased in 1963 and found the deceased already had land parcel number Abothuguchi/Kithirune/150. Afterwards, the said parcel was subdivided into Abothuguchi/Kithirune/1766 and Abothuguchi/Kithirune/1767.
7. She added that the deceased had pending litigation over another parcel of land in *Meru Chief Magistrate's Court ELC Case No. 417 of 2004* where he was suing to recover some land located at Munitho from the Kenyatta National Hospital



8. She further told the court that the deceased owned Abothuguchi/Kithirune/1767 which she had now subdivided equally into 5 portions numbers 3511, 3512, 3513, 3514 and 3515 to be shared by the deceased's surviving beneficiaries. She produced 2 documents to prove this:
 1. Copy of title deed for Abothuguchi/Kithirune/1767 registered in her deceased husband's names.
 2. Consent dated 16th October, 2018 approving the subdivision of Abothuguchi/Kithirune/1767 into 3511, 3512, 3513, 3514 and 3515.
9. The Administratrix thus asked the court to dismiss the objection and distribute the land equally to the beneficiaries.
10. In cross-examination, it emerged that while it was true that the deceased had initially subdivided the land into 5 portions and indicated how the same were to be shared out, he also had begun to recalibrate the portions because the Administratrix pointed out to him that he had inadvertently excluded 1 daughter from getting a share and he agreed to re-subdivide but before he completed the alteration, illness took him away. She added that the 5 portions were unfair because of excluding the daughter completely and this is what she was curing as per the intended correction by the husband prior to his demise. She added that 0.41Ha was reserved for the deceased and himself. In further cross-examination, she admitted that she attended the Land Control Board session for subdivision of land into 5 portions and never raised any objections.
11. In reply, the Objector told the court that the current land was Abothuguchi/Kithirune/1767 and further that the Kenyatta National Hospital case was about a title deed that the deceased had deposited as security for medical costs.
12. The parties exchanged written submissions. The Objector's submissions are dated 18th December, 2023 in which he relied on the authority of *In Re Estate of the Late Swanyang Ngilotochi (Deceased)* (2021)eKLR arguing that the intention and wishes of the deceased were to have the 5 portions inherited to each child as orally expressed to all the family members. On her part, the Administratrix's submissions are dated 8th December, 2023 containing 2 short paragraphs urging the court to dismiss the objection for lack of supporting evidence. The court has studied these submissions.

Issue for Determination

13. The only issues for determination are:
 1. (non)existence of a Will.
 2. Mode of distribution of the Estate.

Determination

a. (Non)Existence of the Will or handwritten wishes of the deceased

14. From the evidence on the court record, there is no evidence to show that the deceased recorded a Will to show how the land was to be shared. The purported book that was written by the deceased was neither produced as an exhibit nor was a document examiner report to authenticate the document in compliance with the provisions of section 48(1) of the *Evidence Act* which states:

48.



- (1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger or other impressions.
- (2) Such persons are called experts.

15. In the result, the court finds that there was no written will admissible in law for the purposes of the succession of the estate.

b. Mode of Distribution

16. Following the testing of evidence in court, the court is satisfied that the deceased had orally and openly expressed how the land was to be shared out and undertook steps to subdivide the same into 5 portions. The cited authority by the objector is helpful in this regard:

" In the circumstances, I find that the deceased established his wishes on how his two parcels of land were to be divided during his lifetime...the proposed mode of distribution of the petitioners respects the wishes of the deceased. I therefore approve it."

17. The evidence shows in this case that the deceased invited the children and their mother to the Land Control Board for subdivision of Abothuguchi/Kithirune/1767 into 5 portions. The established and visible intention of the deceased was to share out the land as follows:

- a. 3511: Naomi Mukiri and her daughters
- b. 3512: Arnold Mutuma Buuri
- c. 3513: Martin Mwirigi – the Objector
- d. 3514: Ephraim Kirimi – his widow Purity Makena and her children to inherit.
- e. 3515: Amos Koome Buuri
- f. The Munitho land was sold to pay Kenyatta National Hospital medical costs but there was litigation about it and no one could be apportioned it for inheritance.

18. Contrary to the Administratrix's contention that the deceased wanted to undo this act, the evidence shows that he was only prevented from signing the transfers by his demise following prolonged illness. In the result, the court upholds the objection by Martin Kabori Buuri as merited and orders that the deceased estate shall be distributed as per the wishes he had openly expressed and which he himself had already began to implement with the consent and approval of the wife and children when he went to the Land Control Board. Each party shall bear its own costs. Right of appeal is 30 days.

DATED, READ AND SIGNED AT GITHONGO THIS 26TH DAY OF JANUARY, 2024

HON. T. A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

