

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

SUCCESSION CAUSE NO. 33 OF 2010

IN THE MATTER OF THE ESTATE OF MOSES MUYA

KAGOCHA alias MUYA KAKUYA (DECEASED)

RULING

1. The deceased had died on 4/5/1999, leaving behind three beneficiaries. The estate was non-contested. Grace Nyawira Kiama was appointed administrator, and the grant was confirmed on 6/10/2010. The children of the deceased were to share the Land Parcel No. Konyu/Baricho/73 and Konyu/Baricho/714 measuring 1.25 Ha equally.
 - a. Ethan Maina Muya - I.D No. xxxx035
 - b. Grace Nyawira Kiama - I.D. No. 0xxx193
 - c. Samuel Kinyua Muya - I.D. No. xxx2524
2. An application for review under Rule 63 and 73 of the Probate and Administration Rules was filed to distribute the share of Ethan Maina Muya (Deceased) to Jane Wangu Maina and Moses Muya Maina.
3. Irene Wambui Maina filed a notice of appointment through the firm of Mathaiya Baru. She stated that she did not recognize the applicant as a co-widow of the late Ethan Maina Muya. She

stated that she has a daughter, Anne Wanjiku, who should be part of the estate.

4. The matter came before me for directions. The matter was part-heard. However, I noted that the dispute does not relate to the estate of the late Moses Muya Kagocha (deceased). It is a dispute in the estate of an heir to his estate.
5. The breadth and extent of the estate of Ethan Maina Muya (deceased) are unknown. The estate is yet to be published in the Kenya Gazette. The chief's Letter in the file relates to the deceased herein, not Ethan Maina Muya. in the case of *Holmes v Holmes* [2022] KEHC 10837 (KLR), H P G Waweru, noted as follows:

The Petitioner herein is the spouse of the Deceased. The Objector is a child of the Deceased. Contrary to the assertions of the Objector in his objection, he does not rank equally with his mother. The mother is a rank above him. He is not entitled in the same degree to administer the estate as his mother, and certainly he has no priority over her. It was therefore not necessary for the Petitioner to give any notice to the Objector or the other children or seek their consent or renunciation prior to petitioning for grant. A plain reading of Rule 26 of the Probate and Administration Rules is quite clear on this. That rule provides –“(1) Letters of administration shall not be granted to any applicant without notice to every other

person entitled in the same degree as or in priority to the applicant.(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 39 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.(3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.”

6. In the case of *In re Estate of Stephen Taraiya Kapande (Deceased)* [2021] KEHC 13625 (KLR), S. N. Mutuku J, held as follows:

Section 68 provides for the procedure to lodge an objection by anyone opposed to the application for issuance of a grant. This objection must be done within the period specified in the Notice. After the objection has been lodged, the court issues a notice to the objector to file an answer to the application and a cross application within a specified period after which the court proceeds to determine the matter. Where there is no objection lodged the court proceeds to issue the grant.

To the same effect, Rule 17(1) of the Probate and Administration Rules also provides as follows in this regard:

“Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection”.

➤ In addition, Rule 17 sub rules 11 provides that so long as an objection which has been lodged has not been withdrawn, no grant shall be made by any registry to the estate of the deceased, prior to the expiration of the period for the filing by the objector of an answer and cross-application specified by the court under section 68 of the Act. Further, no registrar shall make a grant if he has knowledge of the existence of an effective objection lodged in any registry in respect of the estate of the deceased.

It is evident from the above provisions that an objection can only be competently made before the issue of a grant and within the time limits set out in the published notice of an application.

7. Therefore, a decision whether or not a party is a beneficiary must be made by way of a question of objection in the estate it relates to before the succession of the grant. The court cannot thus distribute the capital assets of the deceased heir in the absence of proceedings in respect of his estate. Succession in respect of the estate of Ethan Maina Muya, should therefore be in his estate.
8. Consequently, I expunge all proceedings and the application dated 24/11/2017. The beneficiaries of the estate should file a fresh petition for that estate and list all beneficiaries. They will, as usual, be published in the Kenya Gazette to welcome any objections in that cause not on the father's estate.
9. In respect of the estate of Moses Muya Kagocha alias Muya Kakuya (Deceased) the distribution should be as per the certificate of confirmation of grant issued on 6/10/2010.
10. However, I rectify the same to read in respect of Ethan Maina Muya and the estate of Maina Muya (Deceased). His share shall be registered in the name of the estate of the late Ethan Maina Muya (Deceased) pending succession.

11. The administrator of the estate of Moses Muya Gagocha alias Muya Kakuya, that is, Grace Nyawira Kiama, will sign on behalf of the deceased's estate for purposes only of registering in the name of the deceased's estate.
12. The County Land Registrar should thereafter restrict dealings on the share of the late Maina Muya.

Determination

13. In the circumstances, I make the following orders:
 - a. All proceedings and the application dated 24/11/2017 in relation to the estate of the late Ethan Maina Muya (Deceased) are hereby expunged from the record.
 - b. The beneficiaries of the estate should file a fresh petition for that estate, of late Ethan Maina Muya (Deceased)
 - c. In respect of the estate of Moses Muya Kagocha alias Muya Kakuya (Deceased), the distribution should be as per the certificate of confirmation of grant issued on 6/10/2010.
 - d. the said grant is hereby rectified in respect of late Ethan Maina Muya. The share of late Ethan Maina Muya shall. His share shall be registered in the name of the estate of the late Ethan Maina Muya (Deceased) pending succession.

- e. The administrator of the estate of Moses Muya Gagocha alias Muya Kakuya, that is, Grace Nyawira Kiama, will sign on behalf of the deceased's estate for purposes only of registering in the name of the deceased's estate.
- f. The County Land Registrar should thereafter restrict dealings on the share of the late Maina Muya.
- g. The file is closed.
- h. The administrator to transmit the estate by 24/8/2026.
- i. Directions on 22/10/2026.
- j. Each party to bear its own costs.

DELIVERED, DATED and SIGNED at NYERI, virtually on this **24th day of February, 2026**. Ex Tempore Ruling Delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Mr. C.M King'ori for the Applicant

Mr. Mathaiya Baru for the 1st and 2nd Respondent

Court Assistant - Michael

ORIGINAL