



REPUBLIC OF KENYA



**In re Estate of Margaret Wachuka Mugo (Deceased) (Succession Cause 1099 of 2018) [2025] KEHC 4269 (KLR) (Family) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4269 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 1099 OF 2018**

**CJ KENDAGOR, J**

**MARCH 25, 2025**

**IN THE MATTER OF THE ESTATE OF MARGARET WACHUKA MUGO (DECEASED)**

**BETWEEN**

**JAMES MUGO MBUTHI ..... APPLICANT**

**AND**

**ANTHONY GICHUHI MUGO ..... RESPONDENT**

**RULING**

1. The Applicant and the Respondent are beneficiaries to the estate herein. The grant of letters of administration intestate were issued and subsequently confirmed. The distribution of the estate was agreed upon. The Respondent is the administrator.
2. The Applicant has moved the Court via the application dated 11<sup>th</sup> January, 2024 seeking the following orders;
  - a. This application be certified as urgent and be heard ex parte on the 1<sup>st</sup> instance.
  - b. The defendant/respondent be restrained from dealing with the property registered as Dagoretti/Riruta/7410 and the rent and profits accruing therefrom be managed by an estate management company appointed by court until the hearing and determination of the application herein.
  - c. The school located in the property registered as Dagoretti/Riruta/7421 be placed under a receiver manager pending hearing and determination of the application herein.
  - d. The amounts received from para 2 and 3 herein instant be deposited in the account directed by the orders issued by Lady Justice Ongeru on the 5<sup>th</sup> day of March, 2020.



- e. The defendant/respondent be restrained from dealing with the property registered as Gilgil Plot 1952.
  - f. The defendant/respondent be ordered to account for the proceeds of sale of shares and the monies in the accounts of the deceased pending hearing and determination of the application herein.
  - g. That an order of specific performance be issued ordering the defendant/respondent to form a trust for the management of property registered as Dagoretti/Riruta/7410.
  - h. The school located in the property registered as Dagoretti/Riruta/7421 be placed under a receiver manager pending hearing and determination of the main suit herein.
  - i. The defendant/respondent be ordered to subdivide the property registered as Gilgil Plot 1952 pending hearing and determination of the main suit herein.
  - j. The defendant/respondent be ordered to remit the proceeds from the sale of shares of the deceased in accordance with the certificate of confirmation of grant or in the alternative to sell the said shares and divide the proceeds in accordance with the confirmed grant pending hearing and determination of the main suit herein.
  - k. The costs of this application be awarded to the applicant.
3. The application is opposed by the Respondent who filed grounds of opposition and a replying affidavit.
  4. The parties filed submissions which I have duly considered.

### **Analysis and determination**

5. The application touches on some of the properties of the estate. Dagoretti/Riruta/7421 (Portion A in the Certificate of Confirmation of Grant) is a subdivision of Dagoretti/Riruta/4572. The heirs' shares will go to a Family Trust that is to be created and registered for all beneficiaries to own in equal shares.
6. Dagoretti/Riruta/7410 (Portion M) is a subdivision of Dagoretti/Riruta/4578. The Respondent was allocated a 50% share in the same, and the other 50% share is to go to a Family Trust that is to be created and registered for all beneficiaries to own in equal shares. This portion has a school- St. Antony's High School.
7. Gilgil Plot 1952 is to be distributed equally among the beneficiaries.
8. The shares are for Safaricom and Eveready and the proceeds were to be sold and shared equally among all beneficiaries.
9. The Applicant contends that the Administrator/Respondent has not fully implemented the grant, which leads to the requests outlined in the application. He accuses the Respondent of solely managing the school property despite the confirmed grant directing the establishment of a trust to oversee the property. The Applicant also contends that the Respondent has failed to remit the proceeds from the sale of the shares.
10. The Respondent asserts that he has performed his role as an administrator well and contends that the Applicant is the one frustrating the implementation of the grant.
11. The record shows that an application dated 15<sup>th</sup> November, 2021 was heard and determined by the court on 4<sup>th</sup> November, 2022. Pauline N. Mugo, one of the estate's beneficiaries, presented that



application. The Applicant herein was listed as an interested party. In that application, the court declined to review the distribution. Also, it declined to remove the present Respondent (Anthony) as an administrator. The Applicant (Pauline) was granted leave to commence contempt proceedings against the administrator if she believed he had violated any of the orders made by the Court.

12. The current application requests similar orders, even though it has been coached differently. I will review this further below.
13. In an order made on 30<sup>th</sup> March, 2020, the Court directed that three nominees hold estate accounts that was effected and the Applicant and respondent are among the signatories together with Caroline. The annexures in the replying affidavit indicate that the Applicant refused to cooperate, and the family discussed and had resolutions on the collection of the rental income from property 7410. The amounts were distributed to beneficiaries, and they further agreed the Respondent would settle additional bills and accounts that needed to be resolved.
14. The property on 7421 is a school that has been running and the fees and money received are stated to be deposited in a joint account with the previously stated signatories and one Rose Muthoni. Nothing supports the Applicant's assertion that the Respondent benefits to the Applicant's detriment. The appointment of a receiver is a significant and serious action that cannot be invoked casually, as the Applicant seeks.
15. Regarding the developments the Applicant mentioned in property 7421, if they are attached to the property, they should benefit all the beneficiaries and be included in the collected rent unless each beneficiary has the option to set up independently, as the Respondent claims.
16. There is evidence that the Gilgil Property has been registered in the names of the beneficiaries according to the Certificate of Confirmation of Grant. The Certificate does not indicate that it was to be subdivided. Resolutions on subdivision and subsequent transfer will not fall under the Court, as the transmission upon estate distribution has already occurred. There is also no evidence that the Respondent is in any way interfering with the property.
17. Granting the orders sought in this application is akin to reviewing the Certificate of Confirmation of the Grant based on nearly the same grounds presented in the application dated 15<sup>th</sup> November, 2021 that was presented by another beneficiary and dismissed by the court.
18. The pleadings reveal that the beneficiaries involved in the estate are not cooperating fully together, which is significantly delaying the estate distribution process. Specifically, the failure to sign essential documents is obstructing the execution of the court's orders and the implementation of the certificate of confirmation of the grant. This lack of cooperation not only prolongs the resolution of the estate matters but also increases tensions among the parties. To foster a more harmonious resolution and to protect their respective interests, it is crucial for the parties to act promptly and fulfil their obligations, thereby putting these longstanding issues to rest once and for all. The matter shall be fixed for mention in six months to confirm that the estate administration shall have been concluded.
19. The Application dated 11<sup>th</sup> January, 2024 is dismissed for lack of merit.
20. Each party is to bear its own costs.
21. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 25<sup>TH</sup> DAY OF MARCH, 2025.**

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**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Mr. Njoroge Advocate for Applicant

Mr. Ambani Advocate for the Respondent

