



In re Estate of Gladys Muthoni Ndungu (Deceased) (Succession Cause 9 of 2008) [2024] KEHC 936 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEHC 936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 9 OF 2008
HM NYAGA, J
JANUARY 31, 2024**

BETWEEN

MATHERI NDERI CHONGO ADMINISTRATOR

AND

JAMES KAMAU NDERI PROTESTOR

RULING

1. The subject matter of this Ruling is the summons for confirmation of grant and affidavit of protest. A grant of letters of administration in respect of the estate of Gladys Muthoni Ndirangu, deceased was made in the joint names of James Kamau Nderi Chongo and Matheri Nderi Chongo on 27th September, 2012. The administrators thereafter applied for the grant to be confirmed vide the summons for confirmation of grant dated 5th August, 2013. In the affidavit of Matheri Nderi Chongo sworn in support of summons on the even date, he proposed the deceased estate to be distributed in the following manner:



Name	DeScription of Property	Share
Njata Chongo Njatha	Nyandarua/geta/966	¼
James Kamau Nderi Chongo	Nyandarua/geta/966	¼
Matheri Nderi Chongo	Nyandarua/geta/966	¼
Robert Kabute Ndungu	Nyandarua/geta/966	¼
Njata Chongo Njatha	Malewa Ranching Co Ltd	¼
James Kamau Nderi Chongo	Malewa Ranching Co Ltd	¼
Matheri Nderi Chongo	Malewa Ranching Co Ltd	¼
Robert Kabute Ndungu	Malewa Ranching Co Ltd	¼

2. The Protestor was not impressed by the aforesaid mode of distribution hence his affidavit of protest. He averred that the property subject of this succession cause originally belonged to Ndungu Ndubia whom he was living with but was not related to him.
3. He stated that the said Ndungu did not have children and that the title deed of the property was registered in the name of their mother as a trustee for him and his younger brother Robert Kabute Ndungu. He annexed a copy of the title deed marked as JKN.
4. He averred that both Njata Chongo Njatha and Matheri Nderi Chono have never paid any money for the registration and or rates due to the county government since 1987 and they are not entitled to a share of the land.
5. He proposed that deceased estate to be distributed as follows: -

Name	Property	SHare
James Kamau Nderi	Nyandaru/geta/966	2 Acres
Robert Kamau Ndungu	Nyandarua/geta/966	2 Acres
James Kamau Nderi	Malewa Ranching Co.ltd	½
Robert Kamau Ndungu	Malewa Ranching Co.ltd	½

6. It was his averment that his other brothers are not entitled to a share of Malewa Ranching Co. Ltd as they refused to be involved in the affairs of the company and stated that they were not interested in the said share.



7. He deponed that following his brother's conduct he paid the said Company Ksh 16,000/= to restore his mother's name in the record company and he was allowed to ballot.
8. He averred that Njatha Chongo Njatha and Matheri Nderi Chongo are not entitled to inherit anything at all.

Analysis & determination

9. The only issue that arises for determination is what is the formula applicable in the distribution of the estate of the deceased herein?
10. It is not in dispute that the deceased died intestate leaving behind the following dependants;
 - i. Njatha Chongo Njatha- Son
 - ii. James Kamau Chono- Son
 - iii. Matheri Nderi Chongo- Son
 - iv. Robert Kabute Ndungu- Son
 - v. Margaret Nyambura- Daughter
 - vi. Esther Wangari Githinji- Daughter
11. The Deceased estate comprised two assets. Namely; Nyandarua Geta/966 and Malewa Ranching Company Ltd Share Certificate No. 1143(10) Shares.
12. On 17th July, 2023 when the matter came up for mention, only the protestor's counsel was present. Given the nature of the dispute, I issued summons to all the beneficiaries to appear in Court The summons requiring attendance of all the beneficiaries before court on 1st November 2023 was duly served upon all the beneficiaries as evidenced by the Affidavit of service dated 11th September, 2023. However, on the said date, none of the beneficiaries appeared before Court The counsel for the protestor then urged the court to look at the summons for confirmation and protest and proceed to render a ruling.
13. Section 47 provides for jurisdiction of the High Court in respect of matters falling under the Act as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
14. The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. (see the case of Priscilla Ndubi and Zipporah Mutiga vs Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013)
15. In the instant case the properties forming part of the estate of the deceased are Nyandarua Geta/966 and Malewa Ranching Company Ltd Share Certificate No. 1143(10) Shares.
16. The rightful beneficiaries are as listed above. I have looked at the mode of distribution by both the protestor and the 2nd administrator. I note the 2nd administrator attached consent for distribution of the estate dated 5th August, 2013. As per the said consent, all the beneficiaries of the estate save for the protestor herein appended their signatures to his schedule of the proposed distribution. It is also



patent from this consent that the deceased's daughters are amenable to the estate of the deceased being equally distributed amongst the deceased's sons only.

17. It is trite law that he who alleges must prove. Section 107(i) of the Evidence Act provides that: -

“Whoever desires any court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

18. The reasons advanced by the Protestor in his affidavit to disinherit his other brothers are not backed by any evidence. I therefore do not approve it. Moreover, my understanding is that the assets of the deceased's estate should devolve to all his beneficiaries equally. Section 38 of the Law of Succession Act provides as follows: -

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

19. In Interpreting the provision in Stephen Gitonga M'murithi v Faith Ngira Murithi [2015] eKLR, the Court of Appeal held that:

“Applying the above principles to both the learned trial Judges' reasoning and distribution, it is our finding that the learned trial Judge fell into an error when he failed to accord equal distribution to all the children of the deceased in violation of section 38 of the Law of Succession Act by discriminating against the married daughters of the deceased.”

20. In the instant case, I do not see any reasons to depart from the provisions of Section 38 of the Act. The proposal by the protester will violate the provisions of the said section without any valid grounds.

21. Therefore, I allow the summons for confirmation of the grant dated 5th August 2013. The estate of the deceased will be distributed in accordance with the proposed mode of distribution by Matheri Nderi Chongo, the 2nd Administrator.

22. Each beneficiary shall pay the costs of the survey and the subdivision of the property equally.

23. There shall be no orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 31ST DAY OF JANUARY, 2024.

H. M. NYAGA

JUDGE.

In the presence of;

C/A Jeniffer

Ms. Wangari for Protestor/1st Administrator

No appearance for 2nd administrator

