



**In re Estate of Lawrence Kairanya M'Mukindia alias M'Mukindia M'Kairanya (Deceased)  
(Succession Cause 2 of 2020) [2024] KEHC 454 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 454 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 2 OF 2020  
EM MURIITHI, J  
JANUARY 25, 2024**

**IN THE MATTER OF THE ESTATE OF LAWRENCE KAIRANYA  
M'MUKINDIA ALIAS M'MUKINDIA M'KAIRANYA (DECEASED)**

**BETWEEN**

**ESTHER MUKIRI KAIRANYA ..... 1<sup>ST</sup> PETITIONER  
JOHN KIRIMI KAIRANYA ..... 2<sup>ND</sup> PETITIONER  
JEREMY KAMATHI ..... 3<sup>RD</sup> PETITIONER  
MWENDA JACOB KAIRANYA ..... 4<sup>TH</sup> PETITIONER**

**AND**

**MARTIN KAIRANYA ..... APPLICANT**

**AND**

**ROSEMARY KANARIO KAIRANYA ..... INTERESTED PARTY  
CATHERINE NKATHA MBAYA ..... INTERESTED PARTY  
SUSAN MUKUBA KAIRANYA ..... INTERESTED PARTY  
JANE KANANU KAIRANYA ..... INTERESTED PARTY  
EZRA MUGUNA KAIRANYA ..... INTERESTED PARTY  
KAIRANYA INVESTMENTS LTD ..... INTERESTED PARTY  
MARY KARIMI KIRIMI ..... INTERESTED PARTY**

**RULING**

1. By an application by the Applicant and the 1-5 Interested parties through Summons dated 17<sup>th</sup> May 2023 for the sharing of rental income from the estate asset Plot No. BII/9 which was by Order of the



Court of 23/3/2023 distributed in equal shares to named beneficiaries being the 1-4 Interested Parties on the one hand and the 7<sup>th</sup> Interested Party, on the other.

2. Upon hearing the application, the court in its ruling of 10/8/2023 considered a visit to the property to be necessary to assist the court in the fair resolution of the dispute and, consequently, directed as follows:
  - “2. The final determination of the application dated 17<sup>th</sup> May 2023 is held in abeyance to await a visit by the Court to the suit property, and, if necessary, the court shall then upon such hearing as is necessary make orders for account as appropriate.
  3. The Court shall visit the locus quo of the suit asset Plot No. Meru Municipality Block 11/9 to observe the development of the plot and the existence of any wings and related matters to assist the court in the equal and fair sharing of the asset among the relevant beneficiaries.”
3. The Court visited the plot subject of the application on 30/11/2023 and after observing the building constructed on the plot, the developments thereon and the siting of the plot invited the Counsel for the parties to make submissions on the pending aspect of the application of 17/5/2023, which they did by written submissions dated 20/12/2023 for the applicants 1-4 Interested Parties and 28/12/2023 for the respondent 7<sup>th</sup> Interested Party, respectively, and ruling was reserved.

### **Determination**

4. The Court must towards the equal sharing of the estate asset between the beneficiaries aim at the equal and equitable distribution of the asset and not just equal sharing of the brick and mortar whether constructed into wings, side or other categorisation. For instance, the equitable factor raised by Counsel that the 7<sup>th</sup> Interested Party has young children to maintain, is compensated by the fact that the 7<sup>th</sup> Interested Party is the only one occupying two-shop sized space on the building where she operates a hardware stores without paying rent.
5. For the 1-4 Interested Parties, it was urged that “there are no ‘wings’ as submitted by the 7<sup>th</sup> Interested Party. The suit land has a building with three frontages... [T]he way the said building is built can only be shared equitably if the rent from all the tenants is collected and banked in a joint Account and then the beneficiaries share the same” equally.”
6. The court notes that the applicants in subject application dated 17/5/2023 the 1-4 Interested Parties addressed the issue only of rent consistent with their prayer no. 3 in the Summons “that an order be issued directing that all rental income from LR. No. Meru Municipality Block 11/9 ought to be shared” ½ share to Mary Karimi Kirimi and ½ share to the 1-4 Interested Parties in furtherance of the order for equal sharing of the plot.
7. The 7<sup>th</sup> Interested Party urged that there was need to subdivide the plot between the applicants and herself as to the holding of the plot as owners in common was not possible “in view of animosity between the 1<sup>st</sup> to 4<sup>th</sup> Interested Parties and the 7<sup>th</sup> Interested Party” and she urged that, in the meantime, “the status quo on how the rent is being collected should remain pending for the subdivision of the plot” according to the wings of the building presently as controlled by the parties.



8. The 7<sup>th</sup> Interested Party further submitted on an option to sell the asset and share the proceeds and urged:

“On whether the plot should be sold and proceeds shared equally, the 1<sup>st</sup> to 4<sup>th</sup> Interested Parties supported the idea (during the Court visit), the 7<sup>th</sup> Interested Party’s position is that the plot should be subdivided and if the 1<sup>st</sup> to 4<sup>th</sup> Interested Parties wish to sell their shares, they can do so once they obtain leave (sic) to their share.”

### **Verdict**

9. The finding of the Court, upon visit to the locus quo at Meru town CBD and having considered the submissions of the counsel for the parties following such visit, is that the suit property LR Plot No. BII/9 and the developments thereon are not amenable to an equal physical subdivision along a middle line, with equal developments on each side, in view of the present construction whether considered sides or wings. The Court has considered as conceded by the 7<sup>th</sup> Interested Party that the registration of the asset as an ownership in common is not suitable in view of the very fierce hostility and acrimony between the parties.
10. The plot is constructed with a building of U-shaped block of shop spaces on the ground floor, with entrances at the front and back and storage/shops on the basement and an atrium in the middle of the building. While the building has construction on all the four sides of the plot, there are no wings corresponding to the holding and occupation of the asset by the two groups. The construction on the side bordering other plots towards Gakoromone market has one shop on the ground floor running all the way to the back to join a single shop at the level of the basement stores. The side of the building bordering the KPCU road has two shops at the basement level at the back, the basement stores and several shops on the ground floor all the way round to the front door entrance into the building on the Gakoromone road. The sides of the building or wings, if the term is used to describe the construction on the plot, are unequally developed.
11. The 7<sup>th</sup> Interested Party holds and occupies the side of the building facing towards its upper frontage along the KPCU road, while the children of the deceased 1-4 Interested Parties hold and rent out the building space towards direction of the Gakoromone market. The number of shops on these sides of the plot are uneven, and not capable of median line sharing, and in any event the 7<sup>th</sup> IP is in occupation of a shop, the size of two regular shop spaces, where she operates a hardware store for which she does not rent.

### **Equal sharing of the asset**

12. The best option for equal sharing of the asset is, of course, the subdivision and registration of two ensuing portions in the respective names of the parties, the 1-4 Interested Parties on the one hand and the 7<sup>th</sup> Interested Party on the other.
13. The option of sale and share of proceeds is suitable where an asset is on account of its small size incapable of subdivision into an economic unit in accordance with any zoning regulations. The land registry and survey authorities may advise as to whether the asset subject of this application may be subdivided and two portions created by the subdivision registered into in the names of the parties.
14. The third option of holding the plot in the names of the 1-4 Interested Parties and the 7<sup>th</sup> Interested Party appears to be ruled out by the obvious acrimony observed by the court during the proceedings in court and at the court site visit. The corresponding method of sharing of rent collected can therefore only be a stop gap measure pending final distribution of the asset upon subdivision or sale.



15. If the process of subdivision of the plot and registration in the names of the parties were to take only a short time, say only one month, it would make sense to leave the status quo as urged by the 7<sup>th</sup> Interested Party citing responsibility to maintain young children and fact that she “has all along been carrying on her business in a shop located on the (wing) side facing KPCU road and also has been collecting rent from the shops situated along he said road, while the 1<sup>st</sup> to 4<sup>th</sup> interested Parties have been running others.” It would avoid the disruption of the rent collection arrangement which may be occasioned by opening of new accounts for the collection of the rent and the administrative inconveniences and costs of sharing it out to the parties.
16. However, the court is willing to take judicial notice of the fact that the process of transmission with survey, subdivision and transmission takes long time and it may be quite a while, many months or years, before the parties may effectively take possession of their registered parcels created on subdivision of the estate plot. During this protracted period, the 1<sup>st</sup> -4<sup>th</sup> Interested Parties who only take rent from two shops in the building would be short changed. That cannot be equitable, and it is never the function of a court of law and justice to assist in unconscionable dealing with assets of a deceased by one party against other beneficiaries.

### **Conclusion**

17. To the extent possible and permissible, it is the best interest of all that the parcel of land be subdivided into two portions and parcels created by the subdivision be registered in the names of the respective parties. For the equal and equitable sharing of the plot by final physical subdivision, the Court shall make an order for the property to be surveyed and subdivided into two parcels and the same registered in the names of the two groups of heirs respectively, or, if not capable of such subdivision and registration by reason of any zoning regulations or otherwise, the property shall be sold and the proceeds shared between the two groups of heirs, with liberty to either side to buy out the other, subject to a joint valuation to be conducted at the cost to be recouped from the gross rental income of the asset.
18. In the meantime, for equal and equitable sharing of the wealth of the asset, the rents collected thereon shall be received in a joint account and shared equally, noting that the 7<sup>th</sup> Interested Party is in occupation of shops for which no rent is paid.

### **Orders**

19. Accordingly, the Court must in the interest of equal and equitable sharing of the asset make orders as follows:
  1. The application dated 17/5/2023 is granted in terms of prayer no. 3 thereof pending the subdivision of the parcel of land into two parcels of land to be inherited in equal shares by the 1-4 Interested Parties on the one hand and the 7<sup>th</sup> Interested Party, on the other.
  2. The parcel of land Plot No. Meru Municipality Block 11/9 shall be surveyed and subdivided into two equal parcels of land which shall be registered in the names on the 1-4 Interested Parties and the 7<sup>th</sup> Interested Party, respectively, and the particular portions taken by the parties being agreed or settled by the Court in default of agreement.
  3. Should the survey, subdivision and registration of two parcels to be created upon such subdivision not be possible on account of need to maintain economic size of the plot or according to any applicable zoning laws, the Court makes a further directive for the sale and sharing of the proceeds of sale between the two groups, with liberty for one party to buy out the other.



4. In the meantime, before the subdivision, registration and sharing of the plots resulting from the subdivision or the such sale of the property, as the case may be, rents collected from all the shops on the plot shall be deposited into a joint account in the names of the Counsel for the Parties that is to say 1-4 Interested Parties and 7<sup>th</sup> Interested Party to opened within the next fourteen (14) days so that the rent due for the month of February 2024 is so deposited.
  5. The said rents collected shall be subsequently shared into two equal parts between the two groups of heirs the 1-4 Interested Parties and the 7<sup>th</sup> Interested Party.
  6. There shall liberty to apply.
20. There shall be no order as to costs in this matter.
- Order accordingly.

**DATED AND DELIVERED THIS 25<sup>TH</sup> DAY OF JANUARY, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

M/S Mwirigi Kaburu & Co. Advocates for the 1-5 Interested Parties.

M/S Maitai Rimita & Co. Advocates for the 6<sup>th</sup> Interested Party.

M/S Nyamu Nyaga & Co. Advocates for the 7<sup>th</sup> Interested Party.

