



In re Estate of Zacharia Mulati Simiyu (Deceased) (Succession Cause 2249 of 2008) [2024] KEHC 541 (KLR) (Civ) (24 January 2024) (Judgment)

Neutral citation: [2024] KEHC 541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
SUCCESSION CAUSE 2249 OF 2008
SN RIECHI, J
JANUARY 24, 2024**

BETWEEN

NYAGAITHERI MWANGI ADMINISTRATOR

AND

HARRISON IRUNGU KURIA ADMINISTRATOR

JUDGMENT

1. The deceased Kuria Gacheru at time of death had 2 wives (houses) each with children. They were Phyllis Wakanyi and Nyagaitheri Mwangi. The Petitioner filed this cause for the administration of his estate. On August 20, 2021 Ougo J. partially confirmed and distributed the estate as follows:

House of Phyllis Wakanyi

1. Loc 13/Gitugi/1938
2. Loc 13/Gitugi/1637
3. Loc 13/Gitugi/1280
4. Loc 13/Gitugi/Matuto/T.29
5. Loc 13/Gitugi/T.30
6. Nyandarua/Geta/1065 whole

House of Nyagatheri Mwangi

1. Loc 13/Gitugi/Matuto/T.31



2. Loc/Gitugi/Matuto/T.32
 3. Loc /31/Gitugi/744
 4. 1st Floor she occupies with her family.
2. The house of Phyllis Wakanyi was represented by Harrison Irungu Kuria and Marriam Wanjiku represented the house of Nyagaitheri Mwangi. The only issue which was outstanding and for this Court is to determine the distribution of the two remaining assets viz:
- a. Plot No. 59 Kariobangi South
 - b. LR 209/9045 Kamukunji
3. By consent the parties were to file respective submissions on the preferred mode of distribution. Both parties filed their respective submissions. Mr. Kinuthia for the applicants submitted that:
- “the admission by 2nd Administrator that it was impossible to work with the applicant in paragraph 21 of the affidavit of protest, makes his proposals untenable and an exercise in futility as there will be no consensus amongst the beneficiaries. In the circumstances we submit that the proposal to subdivide the properties to the bare minimum possible unit under *Sectional Properties Act* and the incorporation of a Company should not be imposed or compelled on the beneficiaries. We rely on *Re Estate of John Musambayi Katumanga Deceased* [2014] eKLR where the learned judge dismissed a proposal for a trust or an incorporated company to facilitate distribution of the deceased estate for lack of consensus of all interested. He stated that such a proposal can only be by the consent of all beneficiaries and there is no consensus in the matter.
- We submit that the applicant's alternative prayer that the properties be sold and the proceeds distributed equally amongst the beneficiaries is fair and just. The proposal will bring the matter to an end and each beneficiary will receive his/her entitlement under the trust”.
4. Mr. Ndegwa for the 2nd Administrator Harrison Irungu Kuria submitted:
- a. That in order to put the dispute at an end and to protect the legacy of the deceased, that the properties ought to be distributed amongst the beneficiary in accordance with the Sectional Property Act. that provides for sub-division of a building into units and/or apartments.
 - b. That subdividing in the properties shall be an advantage to the beneficiaries as some of the beneficiaries directly own and/or use some of the premises.
5. It is not in dispute that part of the property was divided among the two houses by Ougo J. The parties were unable to agree on who gets which of the remaining 2 properties because they have different values. It is also clear that some of the property is developed with rental income. An order for both parties to collect rent had not been honoured. In the circumstances, I find that forming a company where the beneficiaries are shareholders may have its challenges just as division of the units under the *Sections Property Act*. I therefore confirm the summons for two properties as follows:

1. Plot No. 59 Kariobangi South:

Equally between the house of Phyllis Wakanyi – Represented by Harrison Irungu Kuria and the house of Nyagaitheri represented by Marriam Wanjiku.



2. LR 209/9045 Kamukunji:

Equally between the house of Phyllis Wakanyi – Represented by Harrison Irungu Kuria and the house of Nyagaitheri represented by Marriam Wanjiku

DATED AT NAIROBI THIS 24TH DAY OF JANUARY 2024

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S. N. RIECHI

JUDGE

