



**In re Estate of M’Ndegwa M’Riria (Deceased) (Succession Cause  
13 of 2010) [2024] KEHC 2314 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 13 OF 2010  
TW CHERERE, J  
FEBRUARY 29, 2024**

**BETWEEN**

**CHARLES KABURU NDEGWA ..... 1<sup>ST</sup> PETITIONER**

**JOSPHINE KANIKA NDEGWA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**CATHERINE KANYUA MUNENE ..... PROTESTOR**

**RULING**

1. The matter before me relates to distribution of the estate of the deceased. The matter proceeded by way of submission filed on behalf of the Charles Kaburu Ndegwa (1<sup>st</sup> Petitioner) and the Catherine Kanyua Munene (Protestor).

**1<sup>st</sup> Petitioner’s submissions**

2. Concerning assets that form the deceased’s estate, 1<sup>st</sup> Petitioner by his submissions filed on 20<sup>th</sup> February, 2024 contends that LR. No. Nyaki/Kithoka/2079 is not available for distribution the same having been bequeathed to him by the deceased. He proposes that LR. Nyaki/Chugu/660, LR. Nyaki/Chugu/659, LR. Nyaki/Kithoka/1818 and LR. Nyaki/Kithoka/1819 be distributed equally to all the beneficiaries.

**Protestor’s submissions**

3. Protestor by submissions filed on 21<sup>st</sup> February, 2024 contends that the grant issued on 21<sup>st</sup> April, 2011 is inoperative for the reason that Josephine Kaniki M’Ndegwa, one of the administrators died on 04<sup>th</sup> December, 2016. It was submitted that by his actions of intermeddling with the estate of the deceased, 1<sup>st</sup> Petitioner is not a suitable administrator and ought to be replaced with the Protestor herein.



4. Concerning LR. No. Nyaki/Kithoka/2079, Protestor submitted that the 1<sup>st</sup> Petitioner illegally and unlawfully transferred the asset to himself on 15<sup>th</sup> November, 2013 which was 7 years after the death of deceased on 28<sup>th</sup> September, 2006. and subsequently subdivided it into 5 portions namely LR. Nyaki/Kithoka 4521 to 4525 some of which he transferred to third parties. In support thereof, Protestor tendered the green card for LR. No. Nyaki/Kithoka/2079 showing that 1<sup>st</sup> Petitioner transferred the asset to himself on 15<sup>th</sup> November, 2013 which was 7 years after the death of deceased on 28<sup>th</sup> September, 2006. Green cards of the five subdivisions reveal that the subdivisions were He subsequently caused the subdivisions LR. Nyaki/Kithoka 4521 and 4523 were transferred to third parties namely Karwitha Lydia M'Rimbere and Nathaniel Kithinji M'Ikiugu on 17<sup>th</sup> April, 2015 and 10<sup>th</sup> September, 2014 and the other three LR. Nyaki/Kithoka 4522, 4524 and 4525 remained in the name of the 1<sup>st</sup> Petitioner.
5. Concerning LR. Nyaki/Kithoka/1818 presently LR. Nyaki/Kithoka/2078, the Protestor tendered documents in the form of green card and transfer documents to demonstrate that it was not available for distribution the same having been transferred by the deceased to one Gerald Kirima Kirituri and a title deed issued on 18<sup>th</sup> August, 1994 long before the death of deceased on 28<sup>th</sup> September, 2006.
6. The Protestor proposes that the estate of deceased comprising of LR. No. Nyaki/Kithoka/2079 and subdivisions thereto, LR. Nyaki/Chugu/660, LR. Nyaki/Chugu/659 and LR. Nyaki/Kithoka/1819 be distributed as follows:
  1. LR. No. Nyaki/Kithoka/2079 and subdivisions thereof equally to all the beneficiaries
  2. LR. No. Kirwiro/Chugu/613 equally to all the beneficiaries
  3. LR. Nyaki/Chugu/659 equally to Catherine Kanyua Munune and Brian Muriuki Morris (Minor)
  4. LR. Nyaki/Kithoka/1819 equally to all the beneficiaries

### **Analysis and Determination**

7. I have considered the affidavits on record and submissions filed on behalf of the 1<sup>st</sup> Petitioner and the Protestor and I have deduced the issues for determination to be as follows:
  1. Whether Protestor ought to be appointed as sole administrator of the estate
  2. What assets comprises the estate of the deceased
  3. Who are the beneficiaries of the deceased
  4. How should the estate be distributed

### **Whether Protestor ought to be appointed as sole administrator of the estate**

8. Josphine Kanika Ndegwa a co-administrator with the 1<sup>st</sup> Petitioner died on 04<sup>th</sup> June, 2016.
9. Section 81 of the said *Law of Succession Act* provides that; -

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them.....(Emphasis added)



10. What is clear from the above provision is that the Act does not contemplate substitution of a deceased co-administrator. The powers and duties of such deceased co-administrator vests in the surviving co-administrator. As such, in the instant case, upon the death of Josphine Kanika Ndegwa, in the absence of a continuing trust, his duties and powers automatically and by operation of law vested in the 1<sup>st</sup> Petitioner.
11. However, by a ruling dated 25<sup>th</sup> day of January 2016, Gikonyo J indicted the 1<sup>st</sup> Petitioner for intermeddled with the deceased's asset comprised in LR. No. Nyaki/Kithoka/2079. I am therefore persuaded that the 1<sup>st</sup> Petitioner is not fit to act as a sole administrator.
12. In the persuasive authority of *In re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR, Justice F. Gikonyo expounded on the instances where an additional administrator can be appointed to substitute a deceased administrator. The learned Judge held that:
 

“(11) There are however situations where an additional administrator should be appointed. For instance, where there is a resulting trust, a sole surviving administrator is required to apply for an additional administrator to be appointed which failing the court will appoint on its own motion. Similarly, where the intestate is polygamous, death of one of the administrators may require a replacement for purposes of the house he represented. Or for a good cause and in the best interest of all persons concerned the court may appoint an additional administrator of an estate. This is in discretion under section 66 of the *Law of Succession Act*. Therefore, there is no complete prohibition of appointing another administrator in addition to a surviving administrator or administrators. Nothing wrong in the appointment of the first administrator herein.”
13. In the instant case, Applicant not faithfully administered the estate of the deceased and hence, Catherine Kanyua Munene is appointed as an additional administrator in place of the deceased administrator Josphine Kanika Ndegwa.

#### **Assets comprising the estate of the deceased**

14. Both parties agree that LR. Nyaki/Chugu/660, LR. Nyaki/Chugu/659 and LR. Nyaki/Kithoka/1819 form part of the deceased's estate.
15. The assets that are disputed are disputed are LR. No. Nyaki/Kithoka/2079 and LR. No. Kirwiro/Chugu/613.
16. To begin with LR. No. Kirwiro/Chugu/613 was introduced to this cause by the Protestor. I have perused the file and I did not find any evidence to demonstrate that the asset belongs to the deceased. I therefore rule that LR. No. Kirwiro/Chugu/613 does not form part of deceased's estate.
17. Concerning LR. No. Nyaki/Kithoka/2079, Gikonyo J by a ruling dated 25<sup>th</sup> day of January 2016 found that the 1<sup>st</sup> Petitioner intermeddled with the said asset which he transferred to himself and subsequently illegally and unlawfully subdivided into five portions namely LR. Nyaki/Kithoka 4521 to 4525.
18. Subsequently on 24<sup>th</sup> October, 2018, Majanja J afforded the 1<sup>st</sup> Petitioner an opportunity to demonstrate that he did not intermeddle in the estate by providing documents in support of the transfer of LR. No. Nyaki/Kithoka/2079 to him by the deceased within 30 days. To date 6 years



later, no documents have been filed and the finding by Gikonyo J that the transfer of LR. No. Nyaki/Kithoka/2079 to the 1<sup>st</sup> Petitioner and the subsequent subdivisions were as a result of acts of intermeddling with deceased's estate remain in force.

19. It therefore follows that the illegal and unlawful transfer of LR. No. Nyaki/Kithoka/2079 to the 1<sup>st</sup> Petitioner and the subsequent subdivisions into LR. Nyaki/Kithoka 4521 to 4525 and subsequent transfers of LR. Nyaki/Kithoka 4521 and 4523 to Karwitha Lydia M'Rimbere and Nathaniel Kithinji M'Ikiugu respectively on 17<sup>th</sup> April, 2015 and 10<sup>th</sup> September, 2014 and the other three LR. Nyaki/Kithoka 4522, 4524 and 4525 to the 1<sup>st</sup> Petitioner and the titles thereof have no force of law.
20. Consequently, I have come to the conclusion that the assets forming part of deceased's estate are as follows:
  1. LR. No. Nyaki/Kithoka/2079 and the subdivisions arising therefrom
  2. LR. Nyaki/Chugu/660
  3. LR. Nyaki/Chugu/659
  4. LR. Nyaki/Kithoka/1819

#### **Beneficiaries of the deceased's estate**

21. The beneficiaries of the deceased who are entitled to his estate have been agreed by the parties as follows:
  1. Harriet Gacheke Ndegwa - widow (deceased)
  2. Florence Ndegwa - widow
  3. Josephine Kanaiki Ndegwa - deceased with no issue
  4. Catherine Kanyua Munene
  5. Cecilia Kajigi Mwirebua
  6. Julius Kiriinya - deceased with issues
  7. Charles Kaburu Ndegwa
  8. Dorothy Kaigongi
  9. Morris Mugwuku Ndegwa
  - (10) Agnes Karimi Kariuki - deceased with issues

#### **How should the estate be distributed**

22. In a case of this nature where the deceased died intestate and was polygamous, survived by one widow and children, the anchor on distribution of his estate is Section 40 of the [Law of Succession Act](#) which primarily provides that;

“ 40.

- (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number



of children in each house, but also adding any wife surviving him as an additional unit to the number of children”.

23. The mode of distribution proposed by the 1<sup>st</sup> Petitioner supports the position of the law and is in my considered view fair and just. There being no explanation why the Protestor should keep LR. Nyaki/Chugu/659 to herself to the exclusion of the other beneficiaries and still share the remaining assets equally with the other beneficiaries, the Protestor’s proposal concerning distribution of LR. Nyaki/Chugu/659 is rejected.
24. From the foregoing analysis, the summons for confirmation of the grant, dated 20<sup>th</sup> January, 2017 is considered and determined in terms of the following orders:
  1. The grant of letters of administration issued to Charles Kaburu Ndegwa and Josephine Kaniki M’Ndegwa on 21<sup>st</sup> April, 2011 on 19<sup>th</sup> March 2014 and is hereby revoked.
  2. Charles Kaburu Ndegwa (1<sup>st</sup> Petitioner) and the Catherine Kanyua Munene (Protestor) are appointed joint administrators of deceased’s estate
  3. Letters of Administration shall issue accordingly
  4. LR. Nyaki/Kithoka 4521 and 4523 in the name of Karwitha Lydia M’Rimbere and Nathaniel Kithinji M’Ikiugu shall be retained to protect the interests of the innocent purchasers
  5. Title numbers LR. Nyaki/Kithoka 4522, 4524 and 4525 in the name of Charles Kaburu Ndegwa are hereby cancelled.
  6. The Land Registrar Meru County is directed to effect the cancellation of Title numbers LR. Nyaki/Kithoka 4522, 4524 and 4525 in the name of Charles Kaburu Ndegwa notwithstanding the availability of the original title deeds and revert the asset to LR. No. Nyaki/Kithoka/2079 in the name of M’NDEGWA M’RIRIA
  7. The deceased estate comprised in LR. No. Nyaki/Kithoka/2079, LR. Nyaki/Chugu/660, LR. Nyaki/Chugu/659LR. Nyaki/Kithoka/1819 shall be distributed in equal shares to the following
    - a. Florence Ndegwa
    - b. Catherine Kanyua Munene
    - c. Cecilia Kajigi Mwirebua
    - d. The estate of Julius Kiriinya -
    - e. Charles Kaburu Ndegwa
    - f. Dorothy Kaigongi
    - g. Morris Mugwuku Ndegwa
    - h. The estate of Agnes Karimi Kariuki
  8. At the point of distribution, the surveyor shall ensure to reduce the share for Charles Kaburu Ndegwa shall be reduced with the equivalent of the land sizes in LR. Nyaki/Kithoka 4521 and 4523 which he unlawfully and illegally transferred to third parties
  9. This matter shall be mentioned on 25<sup>th</sup> September, 2024 to confirm compliance with these orders and transmission



10. No order for costs

**DATED AT MERU THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For 1<sup>st</sup> Petitioner - Mr. Mokua for J.O.Ondieki & Co. Advocates

For Protestor - Mr. Muthomi for John Muthomi & Company Advocates

