



**In re Estate of Silas M’itumwari Mukanagu (Deceased) (Succession Cause 684 of 2013) [2024] KEHC 2221 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2221 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 684 OF 2013  
TW CHERERE, J  
FEBRUARY 29, 2024**

**BETWEEN**

**GRACE CATHERINE NTINYARI ..... APPLICANT**

**AND**

**MURIITHI R.W.STEPHEN ..... PROTESTOR**

**RULING**

1. By a ruling dated 12<sup>th</sup> February, 2020, Grace Catherine Ntinyari (1<sup>st</sup> Administrator/Applicant) and Murithi R.W Stephen (2<sup>nd</sup> Administrator/Protestor) were appointed as joint administrators of the estate.
2. Consequently, by summons dated 03<sup>rd</sup> March, 2020, 1<sup>st</sup> Administrator/Applicant applied for confirmation of grant issued on 12<sup>th</sup> February, 2020 and made a proposal on the mode of distribution.
3. The 2<sup>nd</sup> Administrator/Protestor opposed the mode of distribution and proposed that the estate ought to be distributed to his aunt and uncle whom he did not disclose and to himself on the ground that he lived with the deceased who is his grandfather.
4. The matter before me therefore relates to distribution of the estate of the deceased.
5. Both parties agree on the following three issues.
  - (1) That deceased was the father of Stephen Kirimi who is the father of:
    - i. Grace Catherine Ntinyari
    - ii. Lillian Karimi Stephen
    - iii. Roseline Makena Mutwiri
    - iv. Mercy Kairuthi Kirima



- v. Erick Kimathi Kirimi
  - vi. Muriithi R.W.Stephen
- (2) That the deceased's estate comprised of the following assets:
- i. LR. Ntima/Igoki/6204
  - ii. LR. Ntima/Igoki/975
3. That the 2<sup>nd</sup> Administrator/Protector admits he received compensation from the National Land Commission after it hived off a portion of the estate for construction of a road. The 2<sup>nd</sup> Administrator/Protector has however not disclosed the amount of compensation that was paid to him.
6. According to 1<sup>st</sup> Administrator/Applicant, the estate of the deceased ought to be distributed to the children of Stephen Kirimi (deceased) and Ann Kinya Samson, the wife of Samson (deceased).
7. Accordingly, 1<sup>st</sup> Administrator/Applicant proposed that the estate be distributed as follows:
- LR. Ntima/Igoki/6204
- i. Grace Catherine Ntinyari - 0.0675 Ha
  - ii. Lillian Karimi Stephen - 0.059 Ha
  - iii. Roseline Makena Mutwiri - 0.059 Ha
  - iv. Mercy Kairuthi Kirima - 0.059 Ha
  - v. Erick Kimathi Kirimi - 0.059 Ha
  - vi. Muriithi R.M.W.Stephen - 0.059 Ha
  - vii. Anna Kinya Samson - 0.355 Ha
  - viii. Access road - 0.010 Ha
- LR. Ntima/Igoki/975
- i. Grace Catherine Ntinyari - 0.0289 Ha
  - ii. Lillian Karimi Stephen - 0.0289 Ha
  - iii. Roseline Makena Mutwiri - 0.0289 Ha
  - iv. Mercy Kairuthi Kirima - 0.0289 Ha
  - v. Erick Kimathi Kirimi - 0.0289 Ha
  - vi. Muriithi R.M.W.Stephen - 0.0289 Ha
  - vii. Anna Kinya Samson - 0.173 Ha
  - viii. Access road - 0.013 Ha
8. According to the 2<sup>nd</sup> Administrator/Protector, the estate ought to be distributed to him, his aunt and uncle. Although he does not disclose who his uncle is, I suppose the aunt is Anna Kinya Samson the wife of Samson who is son of deceased.



## Analysis and Determination

9. I have considered the affidavits on record and I have deduced the issues for determination to be as follows:
- (1) What order should be issued concerning compensation paid to the 2<sup>nd</sup> Administrator/Protector by the National Land Commission
  - (2) How should the estate be distributed

### (1) What order should be issued concerning compensation paid to the 2<sup>nd</sup> Administrator/Protector by the National Land Commission

10. As stated herein above, the 2<sup>nd</sup> Administrator/Protector though he admits receiving compensation from the National Land Commission after the Commission hived off a portion of the estate for construction of a road, has not disclosed the compensation sum he received thereof.
11. The 2<sup>nd</sup> Administrator/Protector has similarly not placed before the court any material to support his case that the compensation related to developments he had made on the estate.
12. Consequently, this court finds that the said compensation formed part of the estate of the deceased and ought to have been distributed to the beneficiaries accordingly.

### How should the estate be distributed

13. From the evidence on record, the deceased had two sons Stephen Kirimi who is the father of the parties herein and 4 others as stated at paragraph 1 above, and one Samson the husband of Anna Kinya Samson.
14. Section 38 of the *Law of Succession Act* Cap 160 Laws of Kenya provides:
- “Where an intestate has left a surviving child or children but no spouse, the net estate shall subject to the provisions of Section 41 and 42 devolve upon the surviving child, if there be only one or shall be equally divided among the surviving children.”
15. Consequently, I find that the estate ought to be shared between the two sons. And since the two sons of the deceased are themselves deceased, the provisions of Section 41 of the Act permit distribution of the deceased sons’ shares to their beneficiaries.
16. From the foregoing analysis, the summons for confirmation of the grant, dated 20<sup>th</sup> January, 2017 and the protest filed on 29<sup>th</sup> January, 2021 are considered and determined in terms of the following orders:
1. The compensation paid by the National Land Commission to the 2<sup>nd</sup> Administrator/Protector forms part of deceased’s estate for distribution to all the beneficiaries in this cause
  2. L.R. Ntima/Igoki/6204 shall be distributed as follows:
    - i. 0.355 Ha to Anna Kinya Samson
    - ii. There being no evidence to justify a larger share for the 1<sup>st</sup> Administrator/Applicant, the balance after the deduction of the area to be covered by the access road shall be distributed in equal shares to;
      - a. Grace Catherine Ntinyari



- b. Lillian Karimi Stephen
    - c. Roseline Makena Mutwiri
    - d. Mercy Kairuthi Kirima
    - e. Erick Kimathi Kirimi
    - f. Muriithi R.W.Stephen
3. LR. Ntima/Igoki/975 shall be distributed as follows:
  - i. 0.173 Ha to Anna Kinya Samson -
  - ii. The balance after the deduction of the area to be covered by the access road shall be distributed in equal shares to;
    - a. Grace Catherine Ntinyari
    - b. Lillian Karimi Stephen
    - c. Roseline Makena Mutwiri
    - d. Mercy Kairuthi Kirima
    - e. Erick Kimathi Kirimi
    - f. Muriithi R.W.Stephen
4. It is further ordered that the share for Muriithi R.W.Stephen in both assets LR. Ntima/Igoki/6204 and LR. Ntima/Igoki/975 shall be registered in the name of Grace Catherine Ntinyari and the Deputy Registrar of this court until such a time as the said Muriithi R.W.Stephen shall renders accounts of the sums of money he received from the National Land Commission, as compensation on behalf of the estate.
5. This matter shall be mentioned on 26<sup>th</sup> September, 2024 to confirm compliance with these orders, transmission and further orders
6. 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> Administrator/Applicant - Ms. Nelima for Nelima Associates Co. Advocates

For 2<sup>nd</sup> Administrator/Protestor - Mr. Ochieng for Okatch & Partners Advocates

