



REPUBLIC OF KENYA



**In re Estate of Serah Wangui Wanjihia (Deceased) (Succession Cause 319 of 2015) [2024] KEHC 4444 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4444 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 319 OF 2015  
SM MOHOCHI, J  
APRIL 23, 2024**

**BETWEEN**

**GRACE WANJIRU KARANJA ..... APPLICANT**

**AND**

**EUNICE WAKIYO MAINA ..... PROTESTOR**

**RULING**

1. Before Court for determination is the Summons for Confirmation of Grant dated 18<sup>th</sup> February, 2020 filed by the Applicant, Paul Karanja Wanjihia the 2<sup>nd</sup> Petitioner/Administrator of the estate of the deceased under Section 71 of the *Law of Succession Act* seeking the following:
  - i. That the Grant of Letters of Administration intestate issued by this Honourable Court to the said Eunice Wakiyo Maina & Paul Karanja Wanjihia on the 22<sup>nd</sup> January, 2020 be confirmed.
  - ii. That this Honourable Court be pleased to issue an order for removal of the caution/inhibition placed against parcel of Land Bahati/Kabatini Block 1/1351 to allow for smooth administration of the estate.
2. In his affidavit in support of the Summons, the Applicant names two people including himself and his sister, the Protestor, Eunice Wakiyo Maina as the only children of the deceased and proposes a mode of distribution that the beneficiaries benefit equally each out of the only parcel of land the deceased owned, Bahati/Kabatini Block 1/1351.
3. The Summons was opposed by the protestor Eunice Wakiyo Maina through her affidavit sworn on the 17<sup>th</sup> of March, 2021 on grounds that she instituted the cause without involving her brother due to the fact that the deceased had already transferred a piece of land in Ol Kalou and the land subject to the instant application was her inheritance.



4. That the deceased had distributed her properties prior to her death. She averred that she has been in occupation of the subject property and lived there with the deceased prior to her demise. That the Applicant was not entitled to get a share since he had been in occupation in Plot No. 54 Ol Kalou South Settlement Scheme No. 218 approximately 74 acres, now registered as Nyandarua Ol Kalou South Block 54 as shown in Annex EWM1 and also attached the transfer document from the Lands Adjudication and Settlement, Nairobi as Annex EWM2
5. She further deponed that the claim for a share of the Bahati land by the Applicant is out of ill motive, misrepresentation and dishonesty as he had been aware of the intention of the deceased. That the deceased wanted transfer the property in her name and the Applicant objected to it and even filed Nakuru RM Civil Case No. 593 of 2018 seeking a declaration that the property Bahati/Kabatini Block 1/1351 belonged to him and the deceased held it as a trustee. She prayed that claim for equal share by the Applicant fails and the Court does grant her the whole share as per the wishes of the deceased. That for fairness and justice to be seen as done, the Applicant remains with the Ol Kalou parcel and the Protestor with the land in Bahati where they reside with their families respectively.
6. Vide an application dated 25<sup>th</sup> August 2021, one Grace Wanjiru Karanja supported by an affidavit sworn by herself, she sought to substitute the Applicant Paul Karanja Wanjihia who had passed away on 23<sup>rd</sup> March, 2021 during the pendency of the cause. The Application was allowed as prayed on 25<sup>th</sup> November, 2021.
7. The Protestor filed a Further Affidavit sworn on 20<sup>th</sup> January, 2022 where she deponed that the deceased had demonstrated her intention to bequeath her the subject property by executing land transfer forms in June of 1988 and appeared before the Land Control Board where the consent was issued on 9<sup>th</sup> June 1988 as per Annex EWM1a-c.
8. That she lodged the forms at the lands office and found out that there had been a caution placed by Paul Karanja Wanjihia and as result the same could not be transferred. That even the local authority was aware of the deceased's wishes as per Annex AWM3 (chief's letter). She added that she never left her brother out of the proceedings to deny him a share but she was aware he had inherited the land granted to him.
9. Grace Wanjiru Karanja swore a Supplementary Affidavit on 28<sup>th</sup> October, 2022. She deponed that the Protestor has been trying to disinherit her to the extent of swearing affidavits deponing that she was the only surviving child of the deceased. That as regards to Plot No 54 Ol Kalou Settlement, now Nyandarua/Ol Kalou South Block 54, the Applicant was not bequeathed by the deceased but acquired it from the Settlement Fund Trustee and the property was acquired through proceeds of pyrethrum farming.
10. That from the Green Card the Applicant was the registered owner as from 12<sup>th</sup> October, 1974 and subsequently a charge was registered in favour of the Settlement Fund Trustees as per Annex GWK3. That the estate of the deceased only comprised of Land Reference Bahati/Kabatini Block 1/1351. Despite the fact that property is registered in the name of the deceased, it was acquired by the Applicant who was then working in Tanzania and used to send money to his mother who used to act as a trustee see Annex GWK4.
11. She further stated that the Applicant filed Nakuru RM Civil Case No. 593 of 1988 after finding out that the deceased was being forced to transfer the parcel Bahati Kabatini Block 1/1351. That the matter was transferred to the Land District Tribunal vide letter dated 23<sup>rd</sup> May, 1988. She averred that from the proceedings it was clear that the property was purchased from proceeds sent to the deceased by



the Applicant. It was thus agreed the same would remain in her possession since he did not want to displace his mother.

12. She added that pursuant to a family meeting held on 20<sup>th</sup> February, 1997 at the Assistant Chief's office in an attempt to settle the dispute amicably, it was agreed that the parcel was bought by the deceased and that it would not be transferred to the Objector but would remain in the name of the deceased and that the Applicant would be entitled to the entire parcel upon demise of the deceased. She attached minutes of the meeting.
13. That the transfer forms purportedly done by the deceased are what prompted the Applicant to move to Court. That the Applicant made complaints to all relevant offices raising his objection to the transfer of the land letter in Annex GWK8. That the transferor in the documents marked "EWM1 (a) –(c) is Wangui Wanjihia Kagitho and not the deceased Serah Wangui Wanjihia. That although the Applicant did purchase the property he has always desired that the same be divided in two equal portions.
14. The Court on 19<sup>th</sup> September, 2023 directed that parties canvass the legal arguments by way of written submissions following the non-attendance of the parties citing advanced age.

### **Applicant's Submissions**

15. The Applicant through counsel filed written submissions on 11<sup>th</sup> December, 2023. The Applicant raised 3 issues. On the first issue, it was submitted that there was no dispute as to who the beneficiaries of the estate were or that the only property of the deceased was LR No, Bahati Kabatini Block 1/1351.
16. On the second issue, it was submitted that the Protest should not be allowed as the Applicant has demonstrated that the deceased had only one property and should be distributed equally between her beneficiaries. That there were glaring inconsistencies with the transfer documents and the Power of Attorney relied on by the Protestor. That the Applicant has demonstrated that he acquired Nyandarua/Ol Kalou South Block/ 51 and not gifted on bequeathed by the deceased as evidenced by the green card, receipts of purchase price and documents from the Settlement Fund Trustee.
17. Thirdly, it was submitted that the deceased did not have the capacity to gift Protestor as the property did not belong to her. That from the receipts he used to send the deceased money, the civil suit filed in Court, the tribunal proceedings and the several family meetings the property was not free for transfer. Reliance was placed in Re Estate of the Late Gideon Manthi Nzioka (Deceased) (2015) eKLR.
18. It was also submitted that despite the Protestor's claims that the property was a gift, she never took any initiative for 10 years to perfect the gift. On failure to perfect a gift reliance was placed on *Halsbury Laws of England* 4<sup>th</sup> Edition Volume 20(1) at paragraph 67. That further the deceased never made dispositions by Will and as such the property remained free property within the definition of Section 3 of the *Law of succession Act*.
19. That the inconsistencies in the transfer forms and the power of attorney go to show that the documents were manufactured to fit the protestor's narrative. That the conduct of the protestor in her application for Confirmation of Grant dated 30<sup>th</sup> May 2016 where she deponed that she was the only surviving beneficiary of the deceased shows she was dishonest and driven by greed. It was submitted further that the Protestor in the revoked Grant dated 25<sup>th</sup> May, 2018, she had listed that she would hold the property in trust for herself and other beneficiaries, a declaration which was questioned by the Applicant

### **Protestor's Submissions**

20. The Protestor filed her written submissions in support of her Protest on 22<sup>nd</sup> February, 2024. It was submitted that the deceased purchased the land through borrowing from a women group in



Nyandarua and one Mr. Gichimu and the land was registered in the name of the deceased. That she resided on the parcel together with the deceased till her demise. That the deceased was a beneficiary of Ol Klaou South Settlement Scheme and she acquired Plot No. 54 and thereafter transferred it to the Applicant on 30<sup>th</sup> November 1972.

21. It was further submitted that Section 26 and 28 of the *Law of Succession Act* lays the foundation with respect to distribution. It was further contended that the deceased intention was to settle her children and the Applicant had been provided for. She prayed that Court finds that the Applicant was well provided for.

### **Analysis and Determination**

22. The Court has carefully considered the Summons and the grounds on the face thereof together with the affidavit in support, the Affidavit of Protests as well as the parties' rival submissions. From the record, in brief, the deceased died intestate on the 6<sup>th</sup> day of April, 1997. The Protestor Petitioned for Letters of Administration independently of the Applicant and was issued with a Grant on 25<sup>th</sup> October, 2015. A Certificate of Confirmation of Grant was issued on 29<sup>th</sup> June, 2017.
23. The Protestor moved Court and sought rectification of the Grant and subsequently a Rectified Certificate of Grant was issued on 25<sup>th</sup> May, 2018. The Rectified Grant was nevertheless revoked on 22<sup>nd</sup> January, 2020 and the Court directed that Grant of Letters of Administration be issued jointly to the Applicant and the Protestor. The Applicant then moved Court vide the instant application. During the pendency of the application, the Applicant passed away and was substituted by his wife Grace. It is not in dispute who the beneficiaries of the estate are what is in dispute is what forms part of the estate and whether the beneficiaries had been adequately provided for.
24. This Court further notes that, Paul Karanja Wanjihia the 2<sup>nd</sup> Petitioner/Administrator was the deceased son and that mother and son had a long running dispute on the ownership of parcel of Land Bahati/Kabatini Block 1/1351 which ultimately was decided in favor of the deceased.
25. So, the only sole issue is whether the protest has basis to dislodge the confirmation of grant as per the law.
26. The Protestor contends that the Applicant was not entitled to get a share since he had been in occupation of Ol Kalou South Settlement Scheme No. 218 approximately 74 acres, now registered as Nyandarua Ol Kalou South Block 54 which according to the protestor was Paul Karanja Wanjihia's inheritance.
27. The Protestor has not adduced evidence to demonstrate that Ol Kalou South Settlement Scheme No. 218 approximately 74 acres, now registered as Nyandarua Ol Kalou South Block 54 ever belonged to the deceased and was gifted away by her.
28. This Court finds that parcel of Land Ol Kalou South Settlement Scheme No. 218 now registered as Nyandarua Ol Kalou South Block 54 has all along belonged to Paul Karanja Wanjihia having been acquired in 1974 and does not form part of the estate of the deceased.
29. 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”.



30. The provisions of Section 38 as provided above is clear that the net intestate estate shall be divided equally among the surviving children.
31. In view of the above, the Summons for Confirmation of Grant dated 18<sup>th</sup> February, 2020, is found to be of merit, sufficient cause to set aside the mode of distribution to enable the beneficiaries share the assets equally.
32. Final Orders:
  - i. A Grant of Letters of Administration intestate issued by this Court to the said Eunice Wakiyo Maina & Paul Karanja Wanjihia on the 22nd January, 2020 is hereby confirmed.
  - ii. An Order for removal of the caution/inhibition placed against parcel of Land Bahati/Kabatini Block 1/1351 to allow for registration of transmission, is hereby issued.
  - iii. The parcel of Land Bahati/Kabatini Block 1/1351 to be shared by Eunice Wakiyo Maina & Grace Wanjiru Karanja.
  - iv. The Administrators are to conclude the distribution within 6 months of this confirmation.
  - v. There shall be no order as to costs as this is a family matter.

It is so Ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 23<sup>RD</sup> DAY OF APRIL 2024.**

**MOHOCHI S. M.**

**JUDGE**

