



In re Estate of the Late Stephen Kiburi Muciaria (Deceased) (Succession Cause 583 of 2010) [2024] KEHC 6518 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 583 OF 2010**

LW GITARI, J

MAY 30, 2024

**IN THE MATTER OF THE ESTATE OF LATE STEPHEN KIBURI
MUCIARIA(DECEASED)**

BETWEEN

NAOMI NKOYAI KIBUR APPLICANT

AND

ZIPPORAH GACHEKE 1ST RESPONDENT

MARGARET GACHERI 2ND RESPONDENT

RULING

1. This ruling relates to Chamber Summons application dated 20th February, 2023 by the Applicant. The application is brought under Rules 49 and 73 of Probate and Administration Rules and any other enabling provisions of the Law. The Applicant prays for orders that:
 - i. Spent
 - ii. That the Respondents be compelled by the court to sign and or execute all the requisite documents for transmission of the deceased estate and in default this honourable court authorize the Deputy Registrar to sign and or execute the requisite documents for such transmission for the Applicant's and other Beneficiaries share pursuant to the certificate of confirmation of grant issued on the 15th day of March 2019.
 - iii. That the costs for and incidental to the application be costs in the cause.
2. The applicant' application is based on the grounds thereon on the face of the application and is supported by the affidavit of Naomi Nkoyai Kiburi. The Applicant avers that she is a beneficiary of the



estate of the deceased. That the estate of the deceased was confirmed way back in 2019 and she annexed a copy of the grant marked NNK-1.

3. The Applicant avers that the respondents being administrators of the estate of the deceased have refused to sign the transfer documents to enable the transmission of the deceased estate to the beneficiaries. That the estate of the deceased has never been subdivided not transferred to the rightful beneficiaries. That if this application is declined the estate of the deceased will suffer irreparable damages and waste away. That their interest in the matter will not be adverse to those of the deceased in the matter.
4. The 1st respondent filed a replying affidavit in opposition wherein she avers that the court failed to distribute the property of the deceased equally among the beneficiaries of the deceased. That during the hearing of the Succession dispute herein, the properties of the deceased were listed together with the beneficiaries. That the adjudication officer presented before the court the list of properties forming part of the deceased estate.
5. The 1st respondent avers that the adjudication officer failed/neglected to inform the court that some of the properties forming part of the estate have tea and miraa plantation planted thereon, whereas others are semi-arid areas which are rocky and have less economic value. That the tea plantation is a source of income that resident of the area depend on due to its high economic value and some beneficiaries had developed land by planting tea and miraa, which land has now been given to other beneficiaries at their expense.
6. The 1st respondent contention is other properties form part of the deceased estate are plots in a market which have a high value compared to other properties. That the court shared the property of the deceased equally however the land namely Akaiga adjudication section was distributed to Eric Mutugi, Nicholas Mutwiri, Samuel Thuranira and Jeseo Mwenda is rocky and not comparable to the other properties.
7. The 1st respondent states that the topography of the land namely Akaiga Adjudication section was not brought to the attention of the court during the hearing of the Succession suit herein. That the property namely Akaiga adjudication section is on the maps however the same has not been laid down on the ground by land surveyors and the beneficiaries are not aware of the location of the said property.
8. The 1st respondent avers that before the Succession suit was filed and before the demise of the deceased, one Samuel Thuranira had developed land suit L/P 1742 in particular, 50 points of that parcel of land wherein he had planted miraa and tea plantation which land has now been distributed to the 1st house of the deceased in entirety. That before the demise of the deceased his son Jeseo Mwenda had built a house on it and planted macademia nuts and trees on land parcel namely 2430 which was distributed to her after succession.
9. The 1st respondent states that one of the beneficiaries, Eric Murungi had development on land parcel 2470 an average of 60 points wherein he had planted tea plantation and other food crops and the land was distributed to her. That before the demise of her husband land parcel namely 2063 was given to Margaret Gacheri wherein her husband had built her a house and she developed tea plantation. That the said parcel of land is utilized by her whereby she pick tea leaves on 30 points of the land. That Nicholas Mutwiri picks tea on 50 points and the rest is utilized by Margaret Gacheri. That the said parcel of land was distributed to the 1st house.
10. The 1st respondent further states that Margaret Gacheri was given land parcel 1914 which measures 3 acres and the said land is rocky and uneconomical to utilize. That one of the beneficiaries namely



Lucy Makena was disinherited and did not get any assets from the estate of the deceased despite being a beneficiary by virtue of being a daughter to the deceased.

11. The 1st respondent states that the distribution of properties of the deceased the court awarded Collins Jasper Mugambi an equal share with the deceased children whereas he is the grandchild of the deceased and his mother namely Esther Mukubu was also been provided for.
12. The 1st respondent avers that the following properties have tea plantation and plots respectively. The plots forming part of the estate of the deceased are land parcel namely 3685 and 2817. That the property with tea zones are 1742,1914,2355,2470 and 2817.
13. The 1st respondent states that they intend to file an application for summons for review and revocation of the grant however the advocate advised them to get a valuer's report evidencing the value of all the parcels of land and a letter from the chief to indicate where each beneficiary reside and where they have developed. That the reason for the delay was as a result of the uncooperativeness of the chief who has neglected to issue the said letter and informed them that he is will only oblige to court summons.
14. The 1st respondent avers that they urge the court to take into account such circumstances and disallow the present application and allow them time to file summons for review of grant so that the distribution can be equitable in the circumstances. That the sole reason for not executing the documents is their intention to file the said application.
15. The Applicant filed a further affidavit dated 13th June 2023 wherein she avers that when the deceased died in 1999 one Samuel Thurania was in primary school and he was a pupil therefore had not developed 50 points of L/P 1742 as claimed by the 1st respondent. That the pay slip of tea bushes of L/P 1742 reads the Applicant's name an indication that the same has been developed and utilized by the applicant. She annexed a copy of the pay slip marked T.No 37 marked NKK-1 .
16. The Applicant avers that the 1st respondent was not given L/P 2470 and Erick Murugi has not developed nor planted any tea plantation but the same have been utilized by Benjamin Kimathi Kiburi among others for example nappier grass is owned by Rebecca Kagwiria and arrow roots are owned by the applicant. She annexed a copy of the pay slip marked NKK-2.
17. The Applicant further avers that it is not true that L/P 2063 was left to Margaret Gacheri nor utilized by the 1st respondent as the beneficiaries of the plantation is the 1st house and payment is done to one Naomi Nkoyai and Benjamin Kimathi who was sold the same by the beneficiary of the said land. She annexed a copy of the pay slip marked TNo15 marked NKK-3A and the agreement marked NKK-3b
18. The Applicant states that it is not true that L/P 1914 is uneconomical as the same is productive land that produces crops for subsistence. That the beneficiaries of the land claimed to be rocky and uneconomical have each been given an acre in excess of other beneficiaries.
19. The Applicant avers that Collins Jasper Mugambi was born at the deceased home and raised by him as his own child and is therefore a dependant as per Section 29 of the Law of Succession Act and entitled to the deceased estate as other beneficiaries.
20. The Applicant further avers that the 1st respondent's averments that they intend to file an application for review and revocation of grant is an afterthought and a delay that intends to delay the matter further as the grant was confirmed way back in 2009 4 years down.
21. The Applicant states that she does not oppose the mode of distribution as confirmed on the 11th day of March 2019 but prays the court to order the administrators to expedite on distribution of the deceased estate.



22. The Applicant avers that it is unheard of that the respondents who are the administrators of that estate and who confirmed the grant are the same persons who want to revoke the grant. The Applicant prays that the application dated 20th February 2023 be allowed with costs.
23. The application was heard by way of written submissions. The Applicant filed her submissions dated 13th June, 2023 through the firm of Otieno C & Co. Advocates. The respondents did not file any submission. I have read and considered the Applicant's submission and I need not reproduce herein.
24. The issue for determination herein is whether the orders sought should be granted. I note that a certificate of confirmation of grant was issued on 11th March, 2019 to the respondents. In the application herein, the applicant alleges that the respondents being administrators of the estate of the deceased have refused to sign the transfer documents causing undue delay which has occasioned harm to the beneficiaries.
25. The respondents, being administrators of the estate of the deceased, are under obligation to administer the estate of the deceased fully and distribute it to the beneficiaries. Section 83(f) & (g) of the Law of Succession Act Provides thus:
- “(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be
 - (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.”
26. In the case of Re Estate of Wilfred Munene Ngumi (Deceased) [2020] eKLR, the court stated;
- “Section 83(g) of the Act mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the completed administration. This undertaking cannot be done unless the necessary documents are executed by the relevant parties.....”
27. As beneficiaries of the estate of the deceased, the applicant and the respondents both have a right to the property under Article 40 of the Constitution. When this right is hampered, the applicant has the option to approach the court as she has done herein and the same may be considered by the court even though there is no express provision for it in the law. Rule 49 of the Probate and Administration Rules which provides: -
- “A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary, by affidavit.”
28. Section 47 of the law of Succession Act and Rule 73 of the Probate & Administration Rules give the High Court discretion to determine any matter before it in the interest of justice. (see also the cases of In re Estate of Simon Kiprop Cheriuyot (Deceased) [2021] eKLR and In Re Estate of the Late Kubuta



Kamara Nguuro Alias Pharis Njegegu (Deceased) [2021] eKLR (*supra*). In light of the foregoing, it is necessary that the orders sought be allowed

29. Therefore, having considered the pleadings and arguments of the parties herein, I find that the application has merit and is necessary for the purpose of enforcing the grant which was confirmed way back in 2019.
30. I allow the application as prayed. I make no orders as to costs.

DELIVERED, DATED AND SIGNED AT MERU THIS 30TH DAY OF MAY 2024.

L. W. GITARI

JUDGE

