



In re Estate of Muraguri Ndaiga Warindi alias Kageni Ndaiga (Deceased) (Probate & Administration 1 of 2016) [2024] KEHC 16313 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 1 OF 2016
MA ODERO, J
DECEMBER 20, 2024**

**IN THE MATTER OF THE ESTATE OF MURAGURI
NDAIGA WAIRINDI ALIAS KAGENI NDAIGA (DECEASED)**

BETWEEN

BETH WANGUI KAGENI (DECEASED) 1ST APPLICANT

MARY WANJIKU KAGENDO ALIAS MARY WANJIRU

KAGENI 2ND APPLICANT

AND

JOSPHAT KAGENI NDAIGA RESPONDENT

RULING

1. Before this Court is the Amended Summons dated 30th July 2024 by which the Applicants Beth Wangui Kageni (now deceased) and Mary Wanjiru Kagendo Alias Mary Wanjiru Kageni seek the following orders:-

- “1. That this Honourable Court may be pleased to order the Court Administrator/Executive Officer of the court to sign the Transfer Forms in respect of Land Parcel Number Muhito/Ngamwa/550 on behalf of the Respondent who passed away and was never substituted.
2. That this Honourable Court may be pleased to order the County Land Registrar, Nyeri to register Mary Wanjiru Kagendo and Josphat Kageni Ndaiga as the registered proprietors of Land Parcel Number Muhito/Ngamwa/550 as per the Certificate of Confirmation of Grant dated 17/11/2022 without the production of the original title deed.



3. That this Honourable Court may be pleased to order the County Land Registrar Nyeri to dispense with the production of the Personal Identification Number Certificate, Passport size photographs of the Respondent during registration of Forms LRA 42 in the Lands Office.
 4. That this Honourable Court may be pleased to order the Court Administrator/Executive Officer of the court to sign the Mutation Forms in respect of the subdivision of Land Parcel Number Muhito/Ngamwa/550 and also the subsequent transfer forms on behalf of the Respondent who passed away and was never substituted.
 5. That this Honourable Court may make any other suitable order in the circumstances of this Cause.
 6. That there be no orders as to costs.”
2. The Respondent Josphat Kageni Ndaiga did not file any reply to the application. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 2nd October 2024. The Respondent did not file any written submissions.

Background

3. This matter relates to the estate of the late Muraguri Ndaiga Wairindi Alias Kageni Ndaiga (hereinafter ‘the Deceased’) who died intestate on 8th September 1992.
4. The Deceased had two (2) wives. The 1st wife had six (6) children but only two (2) are still alive. The 2nd wife had only one child Mary Wanjiru Kageni (2nd Applicant).
5. The Respondent is a grandson of the Deceased being the son of Ndaiga Kageni who was a son to the Deceased. The said Ndaiga Kageni is also now deceased.
6. Following the demise of the Deceased the Respondent filed Succession Cause No. 331 of 2010 at the Thika Law Courts. The Respondent sought and obtained a Grant of representation to the estate of the Deceased. The Grant was issued to the Respondent on 18th November 2010. That Grant was subsequently confirmed on 13th July 2011 and the entire estate was to devolve absolutely to the Respondent.
7. The Applicants herein then filed a Summons for Revocation of Grant dated 10th December 2015 alleging that the Respondent had obtained the Grant fraudulently.
8. The Summons was canvassed by way of *Vive Voce* evidence. Vide a Ruling delivered on 17th November 2022. Hon. Lady Justice Muchemi allowed the Summons for Revocation of Grant and made the following orders:-
 - “(a) That the grant issued and confirmed in favour of the respondent in CM Thika Succession Cause No. 331 of 2010 is hereby revoked.
 - (b) That the 2nd applicant Mary Wanjiru Kagendo alias Mary Wanjiru Kageni is hereby appointed the Administrator of the deceased’s estate.
 - (c) That the estate of the deceased being L.R. Muhito/Ngamwa/550 will be distributed as follows:-



- (i) Mary Wanjiru Kagendo alias Mary Wanjiru Kageni – Two (2) acres.
 - (ii) Josephat Kageni Ndaiga – 0.5 acres.
 - (d) That the certificate of confirmation of grant do issue in the foregoing terms.
 - (e) Each Party to meet their own costs.
9. The Applicants have now filed this application seeking to have the documents required for transmission of the estate executed by the Hon. Deputy Registrar.
10. The Applicants state that the Respondent Josephat Kageni Ndaiga passed away on 2nd August 2021. That to date the family of the Respondent have not selected any other person to substitute the Respondent in this matter.
11. The Applicant prays that the orders sought be granted in order to give effect to the judgement of 17th November 2022 and to conclude the distribution of the estate.

ANALYSIS AND DETERMINATION

12. I have carefully considered this application as well as the submissions filed in this matter.
13. I have perused the judgment delivered by the High Court on 17th November 2022. In the said judgment the court directed that the Grant issued to the Respondent be revoked and that a fresh Grant issue in the name of the 2nd Applicant. The court also gave directions on how the estate of the Deceased was to be distributed.
14. In order to give effect to the above orders it is imperative that the transmission documents be executed by both the 2nd Applicant and the Respondent.
15. In her judgement Hon. Justice Muchemi noted that the Respondent passed away during the pendency of the hearing. Despite the court adjourning several times to allow for time to substitute the Respondent, no application for substitution was ever made. The court therefore proceeded with the hearing in the absence of the Respondent.
16. The fact that there has been no substitution of the Respondent cannot be allowed to stall the finalization of this Succession Cause. The courts orders made on 17th November 2022 remain valid and enforceable. No appeal has been filed against that decision and no orders of stay have been issued.
17. This is a very old matter in which the Deceased died way back in the year 1992. In the premises I find merit in this application. The Amended Summons dated 30th July, 2024 is hereby allowed and this Court makes the following orders;-
- 1. The Hon. Deputy Registrar of the High Court is hereby authorized to sign the Transfer Forms in respect of Land Parcel Number Muhito/Ngamwa/550 on behalf of the Respondent.
 - 2. The County Land Registrar, Nyeri County is hereby directed to register Mary Wanjiru Kagendo and Josephat Kageni Ndaiga as the proprietors of Land Parcel Number Muhito/ Ngamwa/550 as per the certificate of confirmation of Grant issued on 17th November 2022 without the production of the Original Title Deed.



3. The County Land Registrar, Nyeri County is directed to dispense with the production of the Personal Identification Number Certificate, Passport Photographs of the Respondent in registering Forms LRA 42 in the Lands office.
4. The Hon. Deputy Registrar of the High Court is authorized to sign the mutation forms in respect of the subdivision of Land Parcel Number Muhito/Ngamwa/550 as well as the subsequent transfer forms on behalf of the Respondent.
5. No orders on costs.

DATED IN NYERI THIS 20TH DAY OF DECEMBER, 2024

MAUREEN A. ODERO

JUDGE

