



In re Estate of Lintari Likirigua alias Litari Rikirigua (Deceased) (Succession Cause 15 of 2016) [2024] KEHC 9903 (KLR) (31 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9903 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 15 OF 2016
EM MURIITHI, J
JULY 31, 2024
IN THE MATTER OF THE ESTATE OF LINTARI
LIKIRIGUA ALIAS LITARI RIKIRIGUA (DECEASED)**

BETWEEN

MARGARET NCOORO APPLICANT

AND

EUNICE KAOME 1ST RESPONDENT

REGINA KAOME 2ND RESPONDENT

GRACE KALANGI 3RD RESPONDENT

IBRAHIM NGULA 4TH RESPONDENT

RULING

1. Upon hearing the applicant’s application dated 3/8/2022, the Court by its ruling dated 30/1/2023, directed that:

“5. There is in place a Confirmed Grant made by the Court (Patrick J. Otieno, J.) by consent of the parties on 6/7/2021 and issued on 19/July 2021 distributing the property in the Estate named in the Schedule as LR Ithima/Antuambui/2360, LR Ithima/Antuambui/2942 and LR Ithima/Antuambui/425 “share equally among all the beneficiaries”. It is on the strength of the Confirmed Grant that this Court granted the orders of 15/7/2022 upon an application for provision of security dated 19/7/2022, as clearly set out in the said Order “for purposes of providing security during the survey work as necessary to effect the Confirmed Grant.”



6. The subsequent application of 3/8/2022 appears to run counter the Confirmed Grant herein made by the Court on 6/7/2021. Or the two sides are implementing the Confirmed grant differently. It is therefore in the nature of an application for revocation of Confirmed Grant, or an application for implementation of the Grant. The Court does not feel properly served with the evidence on the basis of competing affidavits untested by cross-examination as to be able to make a fair determination according to the justice of the case.
 7. The Court shall treat the application dated 3rd August 2022 as an application for revocation of Confirmed Grant in the nature of a protest to the distribution of the estate assets and direct that hearing thereof be had by way of oral evidence to be taken before the court on a date to be fixed in consultation with the Counsel for the Parties.
 8. In the meantime, the status quo on the suit properties shall be maintained pending the hearing and determination of the application dated 3/8/2022 by way of oral evidence.”
2. Pursuant to those directions, Eunice Kaome and Grace Kalangi M’Ibere, the 1st and 3rd respondents respectively filed their statements on 22/3/2023.
 3. The applicant equally filed her witness statement on 25/4/2023.

Evidence

4. The parties subsequently testified before the court with cross-examination. The applicant’s counsel Mr. Mutembei called one witness as follows:

“AW1 Adult Sworn and states in Kimeru Language and states: -

I am Margaret Nchooro. I come from Kaelo. I operate a fruit selling business. I have come to court for succession of my father. My father left 5 children.

Our mother and I was appointed Administrator and when my sister died, the child Eunice Fencing parts. The property should be shared to 5 people. The respondents are dividing to 6 persons. The 6th person Ibrahim Ngula.

The consent was for 5 people. The said Ngula is not related to me. I agree for distribution 5 portions as per certificate of Grant and I had stated the statements.

I have filed a statement dated 25th April, 2023 and court adopted to witness statements of 25th April, 2023 and list of documents dated 25th April, 2023 are marked Exhibit No. 1 and 2 (1)-(6).

The problem is getting me out of my shamba and bringing Ngula on the estate.

Cross – examination by Mr. Omari

We are 5 people. I am the one who has a problem with the distribution. I have fenced my Shamba and they removed the fence and chased me away.

Grant was confirmed 6th July, 2021. The property with a problem is Kaelo Shamba. I do not know the number I have forgotten. (Statement that Eunice is the one who has a problem)



She has uprooted the fence after I had fenced and she has brought in Ngula.

Do you know you have no power to sell the land?

I have not sold the land.

Do you know Boniface Mugambi Kanga?

I know him. He is in court. He is married to my aunt.

You sold land to him before distribution on 28th December, 2020? (Witness is shown agreement)

It is not true. I have not sold the land. I have not sold my land to Mugambi.

I consider that the land should be distributed to 5 portions.

(Agreement of 28th December, 2020 is marked DMFI 1)

Eunice is the only one who has a problem. I got 20 points.

The problem is uprooting the fence and giving to someone else. We have a case at Maua.

I have no problem of the fence and return the way it was before uprooting. The problem is that I had put a fence.

Re – examination by Mr. Mutembei

We have not got titles but we have sub-divided the land into 5 portions. The others came and sub-divided into 6 portions after removing the fencing that I had done.

It is possible to settle the matter as a family. We do not agree with the respondents. The land is 1 acre. We have sub-divided into 5 portions of 0.20. I do not have more than 0.20.

If the property is sub-divided at 6 we can't get 0.20. I have not asked to include Boniface Mugambi. He has never come to demand a piece of land.

Ngula had been brought by Eunice to be distributed the land. If the person called Ngula is removed we can just have 5 portions of 0.20 each.

The proposed distribution did not include me. They came with Police Officers and I was being chased away. I pray for equal sharing of the asset.

5. For the Respondents, Mr. Omari called two 2 witnesses as follows:

RW1 Adult Female Christian Sworn and states in Kimeru

I am Grace Kalangi – 3rd respondent. The deceased is my father. Margaret Ncooro is my younger sister.

Grant was confirmed on 6th July, 2021. We signed consent on sharing of estate.

I wrote a statement dated 17th March, 2023.

The problem is that Margaret Ncooro refused to comply with the grant. We sub-divided the land. There is no other person who causes problems.

Bonface Mugambi and Ncooro are the only who are causing problems. Margaret had sold the land to Bonface. I put the agreement between them in my affidavit support of application.

Court:

1. Agreement dated 28th December, 2020 is marked Rex No.1



2. Statement dated 17th March, 2023 is adopted as evidence in chief for RW1.

Cross – examination by Mr. Mutembei

We went with Surveyor to the shamba. Margaret was there but later left. The surveyor sub-divided the land.

The mutation by Ncooro shows sub-division into 5. In our mutation we have sub-divided into 6 portions.

The certificate of grant said we should distribute into 5 persons. We agreed between 4 to sell the land to Ngula to get money for sub-division.

We 4 of us sold out 0.5 to get 20 points. We remained 122 points each.

Where is the mutation by your surveyor to show you remained with 12 points?

It is with my lawyer.

What distribution costs did you make the error?

Ncooro distributed wrongly and we wanted to correct it.

We were told we would have provision for the road.

On Ncooro's mutation is there anyone getting more than the other?

When we did distribution Ncooro got a larger share.

We have not divided Ncooro's land.

We have not got titles to our land.

Why did you not wait for titles before selling to Ngule?

We had a problem to settle with the funds.

Ngula has fought with Ncooro over the land?

There is an assault case at Maua. Ncooro had cut Ngula. Ncooro is using her land. It is not true she is not using her land.

Why did you not wait for titles before selling to Ngula?

Ngula is not on succession. We sold the plot to him and we had a problem.

Boniface Mugambi's share on the mutation?

The agreement shows the sale of Nchooro's land. Mugambi used to cultivate on the land in the shamba Ncooro is the one who cultivates on the land.

Ngula is actually on the land.

Mutation showing 5 portions, any problem?

The land is divided into 6 portions, but the 6th is from our share.

Do you have a mutation showing the sub-division from your share? No,

Do you know if Ncooro who is the administrator?

She distributed the land wrongly. She did it secretly with a surveyor and destroyed our property. She had not summoned us to go.

Letter of the chief dated.



Nobody has share 20 points because we gave to the road.

Re – examination – Nil

6. RW2 Eunice Muthoni testified as follows:

“I work as a farmer and Miraa businesswoman. I know the deceased and Margret Ncooro. Grant was confirmed on 6th July, 2021. We have not got titles.

Ncooro refused to implementation of grant. She brought Kanga and Boniface Mugambi and when I asked why she had come to distribute the land, Kanga said he had come to get the land.

I reported the land to police and there is a case at Maua.

The land was to be distributed into 5 portions. Ncooro has a problem. The other 4 have no problem. Ncooro said the land was hers and she would distribute as she wishes. I rely on my statement of 17th March, 2023.

Cross – examination by Mr. Mutembei.

When the Succession was concluded upon were you served with summons by the chief?

I have never seen any summons from the chief to share estate.

The problem with the distribution by Ncooro is there was no one else. She proposed the distribution without involving.

Then after sub-division road 2 everybody by their share.

She used to file application for us to release the title deeds. There has been several cases over this estate.

I was sub-dividing the land in accordance with the court order. We subdivided the land into 6 portions. Ncooro has her share and the rest of us have sold to Kanga.

The mutation gives 0.077ha. Everybody show everybody got equal share.

Where is your mutation?

We got each 17 points.

Confirmed grant states distribution into 5 slots.

We had not got title when we sold to Ngula.

The problem is that on the ground, Ncooro has gone to another person. It is not the same as shown on the mutation we got our share on the said distribution.

Ncooro has her own share.

where is your mutation?

You have many cases?

4-5 as Ncooro who has caused all these problems.

Certified Grant Certificate provides for distribution into 5 portions. On our side, we included Ngula.

We did not call the Ncooro’s by summons. We told her by word of mouth and she came and shown her portion.



Assault case

Kanja came and said he wanted another portion and a problem rose.

There is Miraa on whose shamba?

In our family, we are 3 children.

The land belongs to our family. We should share out of 4 of us.

Mwendia's children: The share of the Mwendia's were not before the court.

Muthuku's Children: There were showed in the agreement. We do not have the agreement. We agreed as the 4 heirs.

We sold the land belonging to the 4 heirs.

Re – examination by Mr. Omari

We got order to go and subdivide the land. Order of 22nd July, 2022. We came back to court when Ncooro's refused to do her work.

We asked for surveyor and OCS. Surveyor is a witness. Margret was present with Surveyor and OCS. We do have a problem with Ncooro's share.

Ncooro's share was cut. She was present at the exercise.

Kanga came and he wanted Ncooro to give the other piece of the shamba. Kanga is the purchaser under the agreement. He wants to choose where to get as a purchaser. We do not have a problem with Ncooro's share.

Mutation by Ncooro. We were not there when mutation was done. I am the one who objected to the surveying. It was Ncooro and Kanga who brought the surveyor.

The 2nd survey was done during the day in the presence of Ncooro and OCS.”

7. The Court the invited submissions of Counsel on the evidence.

Submissions

8. The applicant accused the respondents of violating the court's judgment on distribution of the suit property. She prayed for the application to be allowed so that the suit property can be shared equally among the 5 beneficiaries of the deceased. She accused the respondents of intermeddling with the deceased estate by selling a portion of it to the 4th respondent, and cited *Re Estate of M'Ngarithi M'Miriti* (20170 eKLR and *Joseph Oginga Onyoni & 2 Others v Attorney General & 2 others* (2016) eKLR. She urged the court to allow the application and to supervise the distribution of the estate as per the mutation form already presented to the District Land Registrar.
9. The respondents faulted the applicant for failing to adduce evidence to show that they had sold and/or fenced her portion of the land. In their view, the application is a mere afterthought devised to delay the finalization of the matter and the orders sought are highly prejudicial to the interests of other beneficiaries hence the same ought to be dismissed. They submitted that the application has been overtaken by events because it is seeking to injunct parties who are in occupation of their respective portions of land. They urged that the applicant had not made out a case for the revocation of the grant herein, and cited *Jamleck Maina Njoroge v Mary Wanjiku Mwangi* (2015) eKLR and *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* (2016) eKLR.



Court Site Visit

10. Upon a court visit to the parcel of land to clarify the positioning of the subdivisions on 21/3/2024, the court made the following minute on record:

“21/3/2024

Court:

1. The Court visited the site of the disputed parcel of land at Antuambui, Laare Maua between 12.35pm to 1.20pm when it observed the area of dispute and noted the positions of the parties as recorded in the Court visit notes filed herein.
 2. Matter was adjourned to open court on 16/4/2024 for taking of any submissions that Counsel may wish to make following the site visit.
 3. Surveyor to file a report on possible subdivision avoiding the dispute as to the beneficiaries.”
11. The significant observation by the Court was that the deceased was survived by 5 children namely: (1) Ncooro; (2) Kalangi; (3) Kaume (Deceased); (4) Mwambia (Deceased) and (5) Mutuku (Deceased). It was further noted that some of the beneficiaries had sold their shares or portions of their shares to the 4th Respondent purchaser. It was further noted that the disagreement appeared to centre on two issues - (1) the alleged non-provision for the children of the deceased child of the Deceased herein one Mutuku; and (2) the lack of equal frontage or at all for the beneficiaries to the service road adjacent to the plot.
12. In his own words, the 4th respondent purchaser told the court at the site that –
- “The parcels are properly subdivided.
- The problem [arose] when I fenced off the portion adjacent to the road measuring 0.20 acres.”
13. The Equities are equal on both sides. The law must prevail. The Petitioner and the protestor/objector, on the evidence, appear to have sold portions of their lands to respective buyers, including the 4th Respondent in the case of the Respondents and one Mugambi or Kanga in the case of the applicant. The justice of the case, therefore, appears to be to restore the distribution of the Estate to the beneficiaries of the Deceased, and the buyers get their share from the persons who allegedly sold their shares or interests to them. There is sufficient reason, therefore, to have the confirmed Grant implemented in a manner that provides for all the children of the deceased, and the purchasers can claim their purchaser’s interest from the respective seller beneficiaries. The beneficiaries to whom the estate by consent of the parties was to be distributed in accordance with the Certificate of Grant of 19/7/2021 must be the legal beneficiaries of the deceased and does not include persons who have purchased interests, right or wrongly, from the beneficiaries.

Remedy

14. The Confirmed Grant dated 19/7/2021 provided for distribution in equal shares among the beneficiaries of the estate of the Deceased. The 4th Respondent is a purchaser and therefore not a beneficiary to the estate. The beneficiaries of the deceased are his five children and their representatives



where some of them have died. The alleged lack of provision of the children of beneficiary Mutuku (deceased) and the inequitable distribution of the Estate asset to the detriment and prejudice of the beneficiaries as against the 4th Respondent purchaser, is noted.

15. The effective remedy appears to this court to be the realignment of the subdivisions of the land to ensure, firstly, that all the five children of the deceased get their respective equal share to the estate, and where a child of the deceased is himself or herself deceased, her children should take his/her share, as is the case for Mwambia and Mutuku. Secondly, as it is agreed that some of the children had sold portions of their shares to the 4th Respondent purchaser, his share should be carved out of their respective shares, without affecting the shares of the children such as the Applicant and Mutuku who have not sold their portions. Significantly, it is unconscionable to allow the buyer to take the prime portion fronting the road while children of the deceased who did not sell their shares are given portions which are not well situated with respect to the road frontage.
16. Consequently, the Court will direct the Sub-County Surveyor responsible for Maua area to prepare subdivision plans that enable an equitable distribution of the deceased's land among his five children.
17. Such portions as the respective purchasers claim may subsequently be carved out from the beneficiaries who have sold their shares.
18. The matter shall be mentioned before the Court after thirty (30) days to allow for a report by the Sub-County Surveyor on the distribution.
19. The present subdivision for the implementation of the Grant herein is set aside and the Certificate of Confirmed Grant shall be implemented in a manner that provides equally for for each child of the deceased, and for the children of the deceased beneficiaries of the Deceased herein, and to ensure equal advantage of location of shares of the beneficiaries who have not sold their respective shares as against the alleged purchaser.

Orders

20. Accordingly, for the reasons set out above, the Court finds merit in the application for injunction herein dated 3/8/2022 and makes the orders as prayed in Prayer Nos. 2, 3, 5 and 6 of the Summons.
21. The County Surveyor shall file a report on possible subdivision of the deceased's estate equitably sharing the land in a manner that each child of the deceased obtains an equal share to the estate.
22. The respective purchasers may follow up on their sellers for their purchased portions.
23. Mention for further directions on 17/9/2024.

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF JULY, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Mutembei for Applicant.

Mr. Omari for Respondents.

