



**In re Estate of M'Miriti Kimondo (Deceased) (Succession Cause 170 of 2001) [2024] KEHC 10343 (KLR) (22 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10343 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 170 OF 2001  
EM MURIITHI, J  
AUGUST 22, 2024**

**IN THE MATTER OF ESTATE OF M'MIRITI KIMONDO,  
DCEASED SUCCESSION CAUSE NO. 170 OF 2001**

**BETWEEN**

**FLORENCE NAITORE ..... PETITIONER**

**AND**

**MARGARET KIOGORA ..... 1<sup>ST</sup> OBJECTOR**

**MARTIN MURITHI ..... 2<sup>ND</sup> OBJECTOR**

**MORRIS MUTIGA ..... 3<sup>RD</sup> OBJECTOR**

**ERICK MWANGI KIOGORA ..... 4<sup>TH</sup> OBJECTOR**

**JUDGMENT**

- 1. The background of this ruling is that the Court (Mabeya, J.) on 19/6/2019 granted and issued on 4/7/2019 the rectified certificate of Grant herein for distribution of the Estate as follows:

“Rectified Certificate Of Confirmation Of A Grant

I Hereby Certify that the above written Grant of representation to the estate of M'miriti Kimondo the late issued to Florence Naitore Kiogora herein named has this day of 19th June, 2019 has been confirmed by the Court pursuant to the provisions of Section 71 (1) and (3) : J:::of Succession Act. Dated at Meru this 4th day of July 2019

Schedule

Name Description Of Property - Share To Heirs

LR Ntima/Ntakira/2461



Henry Mutuma Kiogora.....0.83 Acres  
 Samuel Nkunja Kiogora.....0.83 Acres  
 Charles Kiogora Miriti.....0.63 Acres  
 Stella Kairuthi Kiogora.....0.20 Acres  
 LR Ntima/ntakira/2462  
 Salesio Ntongai Mugwika .....0.41 Acres  
 Caroline Kenoi .....0.39 Acres  
 Pius Matumbi Nteere .....0.27 Acres  
 Newton Muriungi Mworira .....0.51 Acres  
 Caroline Kenoi  
 Beneoict Mugambi Ouncan  
 Nicholas Mwenoa Mwobobia.....balance Of 0.92 Acres Jointly  
 Ntima/Ntakira/2463  
 Florence Naitore .....1/2 Acre  
 Charles Kiogora Miriti .....3/4 Acre  
 Martin Mureithi  
 Morris Mutiga.....- Balance equally

2. The grant is shown to have been reissued under a different signature on an unshown date with the name of Margaret Mwari Kiogora replacing the names of Charles Kiogora and Stella Kairuthi Kiogora on the asset known as Ntima/Ntakira/2461 and the name of Charles Kiogora Miriti in asset Ntima/Ntakira/2463 in the distribution schedule set out above. There is, however, no corresponding minute entry on the proceedings of the Court indicating the authority by which the changes were made, and they are, therefore, invalid. The authentic Grant remains the Rectified Confirmed Grant dated 19/6/2019 as set out above.
3. Subsequently, it was filed before the Court two applications respectively dated 29/10/2019 by the Petitioner and 30/10/2019 by the Objector. The Court directed that the two applications be heard together by oral evidence.
4. The application of 29/10/2019 by the Petitioner/Administrator seeks the following specific reliefs:
  - “1. That the Honourable Court be pleased to issue an order directing the Land Registrar Meru to cancel all resultant title deeds arising from LR No Ntima/Ntakira/2463 which was subdivided into LR Nos. Ntima/ntakira/3543, 35434 AND 3545 and revert the same to the original owner the deceased herein.
  2. That the restrictions and/or cautions placed by the court against parcels No Ntima/Ntakira/3543, 3544 and 3545 be removed.
  3. That the costs of this application be costs in the cause.
5. The application was supported by grounds set out in the application as follows:

“GROUNDS



- (a) That the certificate of confirmation of a grant was issued on 19th June, 2019.
- (b) That it would be impossible to effect and/or implement the aforementioned the confirmation of grant unless the said subdivided parcels of land are reverted to the number LR No Ntima/Ntakira/2463.
- (c) That it is therefore in order that the orders sought herein be granted so as to implement grant issued on 19th June, 2019.
- (d) That no party shall be prejudiced if the orders sought are granted.”

6. The Application was supported by Supporting Affidavit of Florence Naitore Kiogora of 29/10/2019, as follows:

- “2. That the certificate of confirmation of a grant was issued on 19/6/2019. Annexed herein and Marked "FNK I" is a copy of the said certificate of grant.
- 3. That LR No Ntima/Ntakira/2463 was subdivided into LR Nos. Ntima/Ntakira/3543, 3544 And 3545 sometimes in 2010. ("Annexed herein are copies of certificates of search Marked Fnk 2(a) 2(b) and 2(c)".
- 4. That unless the said subdivided parcels of land is reverted to the original number LR No Ntima/ntakira/2463 it would be impossible to effect and/or implement the aforementioned certificate of confirmation of grant.
- 5. That it is therefore in order that the orders sought herein be granted so as to implement the grant issued on 19/6/2019.
- 6. That no party shall be prejudiced if the orders sought are granted.
- 7. That unless the orders sought are granted, the judgment shall remain unimplemented to the prejudice of the Deceased estate.
- 8. That no party shall be prejudiced if the application made herein is allowed.
- 9. That the instant application is instituted in order to serve the course of justice.”

7. The 4<sup>th</sup> Objector’s application of 30/10/2019 seeks the following orders:

- “
- “2. That this honourable court be pleased to revoke the certificate of confirmation of the grant issued herein to Florence Naitore Kiogora.
  - 3. That the Honourable Court be pleased to issue an order directing the Land Registrar \_Meru to cancel all resultant title deeds arising from LR No Ntima/Ntakira/2463 which was subdivided into LR NOs. Ntima/Ntakira/3543, 3544 and 3545 and revert the same to the original owner, the deceased herein.
  - 4. That the costs of this application be in the cause.”

FOUNDINGS:

- a. That the Applicant is a grandson to the deceased herein and the petitioner is the applicant’s step-sister.



- b. That the certificate of confirmation of a grant was issued to one Florence Naitore Kiogora fraudulently and through concealment of material facts.
  - c. That the succession cause was filed secretly and without the knowledge of the applicant and his sister.
  - d. That the applicant has other siblings namely-
    - 1. Lucy Wambui
    - 2. Ann Njambi.
  - e. That the said siblings were also left out of the distribution of the deceased estate.
  - f. That the proceedings to obtain the said grant were defective in substance.
  - g. That it is therefore in order that the orders sought herein be granted so as the applicant and his siblings can benefit from the deceased estate.
  - h. That no party shall be prejudiced if the orders sought are granted.”
8. The application was supported by facts set out in the Supporting Affidavit by Eric Mwangi Kiogora on 30/10/2019, principally as follows:
- “2. That the certificate of confirmation of a grant was issued to one Florence Naitore Kiogora fraudulently and through concealment of material facts. Annexed herein and marked EMK11 is a copy of the said certificate of grant.
  - 3. That I am a grandson to the deceased herein and the petitioner is my stepsister.
  - 4. That the succession cause was filed secretly and without our knowledge.
  - 5. That I have other siblings namely-
    - 1. Lucy Wambui
    - 2. Ann Njambi
  - 6. That the said siblings were also left out of the distribution of the deceased estate.
  - 7. That the proceedings to obtain the said grant were defective in substance
  - 8. That it is therefore in order that the orders sought herein be granted so that we can benefit from the deceased estate.
  - 9. That no party shall be prejudiced if the orders sought are granted.”
9. Three objectors, respectively, widow and nephews of the late Charles Kiogora joined as 1-3 Objectors on 17/11/2020. [As the applicant in application dated 30/11/2019 had already joined a year before, he is properly the 1<sup>st</sup> Objector and the widow and sons coming in as 2-4 Objectors/Interested Parties but as the naming in the affidavits and address before the court put the widow and her two associates as 1-3 Objectors and the applicant in application dated 30/10/2019 as 4<sup>th</sup> Objector, it shall be so maintained].



## Responses and Hearing

10. The Petitioner/respondent herein filed a Replying Affidavit sworn on 27/12/2019 in answer to the Applicant Eric Mwangi Kiogora's claim in application dated 30/10/2019 as follows:

“1. That this Honourable court be pleased to know that the parcel LR No LR No Ntima/Ntakira/2463 is for the late M'miriti Kimondo Not For Charles Kiogora.

2. The plot belonging to the late Charles Kiogora is:

i. Plot No Ntima/Ntakira/3545.

ii. Ntima/Ntakira/2461

So I find no need to cancel all resultant title deeds arising from LR No LR No Ntima/Ntakira/2463.

3. That the succession was not done in secret. I filed the succession with permission from the owner of the plot LR No Ntima/Ntakira/2463 who was the late Martha Meme M'Miriti and his son the late Charles Kiogora which I have utilized in order to obtain my plot which is plot No LR No Ntimaintakira/3543 since 1999 up to date.

4. Currently, I am not a beneficiary of the late Charles Kiogora's property who owns the plot No LR No Ntima/Ntakira/3545 And Plot LR No Ntima/ntakira/2461.

5. According to the family of the Late Charles Kiogora his property should be distributed by his wife Margaret Kiogora and his son Samuel Nkunjia Kiogora.

6. According to Erick Mwangi Kiogora his late father has shown him some years back Ntimaintakira/3545 when he visits his father with his grandmother.

7. According to Mr Erick Mwangi he lived with his father, step mother and his step siblings after completing class eight at Mpuri village for some months.

8. He later visited his father when he attained eighteen years so that his father would assist him to get an Identification Card of he was assisted and stayed there for six months.

9. I would request the Honourable court to relieve me from being the administrator of the property of the late Charles Kiogora On Plot LR LR No Ntima/Ntakira/2461 And 3545, Late Duncan Mwobobia Plot LR No Ntima/Ntakira/2462, Martin Murithi Mwobobia Plots LR No Ntima/Ntakira/3544.

10. I Mrs Florence Naitore Kiogora Own Plot LR No Ntima/Ntakira/3543.

11. I would [urge] the Honorable court to remove restriction put against plot No LR No Ntima/Ntakira/3543, 3544, 3545 so that the owners would be able to utilize their plots freely.

12. The court should also allow the combination of the willing parties to combine their plots to suit the current existing boundaries without altering the title



deeds which were issued. Those who are willing to cancel their title deeds should notify the Honorable court by writing.

The beneficially of:

- a. LR No Ntima/ntakira/2461 And 3445 Is Late Mr. Charles Kiogora And His Family.
  - b. LR No Ntima/ntakira/2462 Is The Late Duncan Mwobob And his family.
  - c. LR No Ntima/Ntakira/3544 Is For Mr. Martin Murithi Mwobobia.
  - d. LR No Ntima/Ntakira/3543 Is For Mrs Florence Naitore Kiogora.
13. Mrs. Florence Naitore Kiogora LR No Ntima/ntakira/3543 And Mr. Martin Murithi Mwobobia LR No Ntima/ntakira/3544 Inherited From The Plot LR No Ntima/Ntakira/2463 Given To Them With Consent Of The Clan, Chief And The Family. The Remaining Which Is Plot LR No Ntima/Ntakira/3545 Was Meant To Be Shared Jointly By Late Martha Meme And Late Charles Kiogora.

Therefore, Florence Naitore Kiogora Is Not A Beneficiary Of The Late Charles Kiogora Property And Have No Mandate In Its Distribution Including His Land.”

11. The Applicant Eric Mwangi Kiogora filed a supplementary Affidavit sworn on 27/12/2019 and filed on 13/1/2020 reiterating his case as follows:

- “2. That I am indeed a son to the deceased Charles Kiogora Miriti who died in the year 2016 or thereabouts and thus I am a beneficiary to the deceased estate. Annexed is a letter from the Chief, Location Mpuri Location marked EMK 1.
3. That my late father was a son to the deceased 'miriti Kimondo in respect of whom this succession cause relates.
4. That the deceased M'miriti Kimondo children who are both deceased i.e my father Charles Kiogora Miriti And Duncan Mwobobia Miriti.
5. That I Have Two Sisters Namely Lucy Wambui And Ann Njambi.
6. That during my father's lifetime he had' directed that I do get land parcel number is a subdivision from parcel number Ntima/Ntakira/2463.

12. Mr. Ng'entu, Counsel for the 1, 2 & 3 Objectors indicated early on 15/11/2021 that they did not oppose application dated 29/10/2019 and did not seek annulment of the Grant. They opposed the application dated 30/10/2019 by the 4<sup>th</sup> Objector and in addition to the affidavit of 26/6/2020 filed a list of Documents dated 25/11/2021 attaching the following documents:

“Interested Party List of Documents

1. Consent Order dated 23rd September 2014;



2. Affidavit dated 26th June 2020 and received on 26th June 2020;
3. Minutes of Charles Kiogora Miriti family meeting held on 26/12/2019;
4. Copy of Charles Kiogora Miriti Will; and
5. Limited Grant of letters of Administration Ad Litem.”

13. The 1<sup>st</sup> Objector widow of Charles Kiogora filed an affidavit sworn on 26/6/2020 in opposition to the 4<sup>th</sup> Objector’s application dated 30/10/2019 contending that the applicant had never been mentioned in the matter of the succession of the estate of Charles Kiogora as follows:

- “1. That I am the 1st Objector herein well versed with the matters herein hence competent to make and swear this affidavit.
2. That I am related to the deceased herein by virtue of him being my father in law while I am a wife to the late Charles Kiogora.
3. That the last time after appeared before Honourable Justice Gikonyo, the Honourable Judge ordered/directed the Petitioner to adduce evidence demonstrating that Eric Mwangi is a son to my late husband.
4. That when I went home, I came across the court’s documents with which the Petitioner and my late husband used in court to litigate in the same case.
5. That I decided to have a family meeting with all my children, the children of my brother in law Duncan Mwobobia and one elder so that we could deliberate about the said findings.
6. That we sat down and after lengthy deliberations on the 26th day of December 2019 we came to the conclusion that the said Eric Mwangi was not in any way related to my late husband nor any member of our family.
7. That the said meeting was held at Mantutukine Village whereby various deliberations were made as captured in the minutes of the said meeting (annexed and marked MK is a copy of the said minutes).
8. That the said meeting was called for to ascertain how my late husband had distributed his estate and whether the said Eric Mwangi who is only known to the Petitioner herein was my late husband child and whether there was any property bequeathed to him by my late husband prior to his demise.
9. That from the minutes herein it is crystal clear that the said Eric Mwangi is a stranger in our family and that he is not entitled to any share of my late husband estate since my late husband had pronounced himself on how he wanted his estate inherited vide his will dated 18th September 2016.
10. That I make and swear this affidavit to introduce the minutes of the family member held on the 26th day of December 2019 to deliberate on how my late father wanted his property shared.
11. That I implore upon the Honourable Court to be guided by the said minutes to arrive at a just decision.”



14. The 4<sup>th</sup> Objector/ Applicant filed an affidavit entitled Further Affidavit sworn on 15/6/2023, but as the same filed without leave, it was expunged from record.

### Hearing

15. The Court ordered hearing of applications dated 29/10/2019 and 30/10/2019 by oral evidence on 15/11/2021, when the Court ordered exchange of witness statements as necessary. The hearing of the case stalled upon the death of the 4<sup>th</sup> Objector's mother and his failure to attend court, and the matter commenced hearing on 20/11/2023 when the 4<sup>th</sup> applicant confirmed to court that he was acting in person.
16. Two witnesses were called one for each side, the Objector/Applicant in Application dated 30/10/2019 Eric Mwangi Kiogora testifying as Objector's witness OW1 and the petitioner Margaret Kiogora, applicant in application dated 29/10/2019 testifying as the petitioner witness PW1.
17. Hearing concluded on 19/3/2024 and a Ruling was reserved for 4/7/2024 allowance being made for the 4<sup>th</sup> Applicant who wished to make submissions to do so. On 25/7/2024, in default of his filing, and on his confirmation that he did not wish to file submissions, ruling was rescheduled for the 22/7/2024.

### Evidence

18. The record of proceedings shows the evidence presented before the Court. The deponents of affidavits were cross-examined on their respective affidavits at the hearing.
19. OWI Eric Mwangi Kiogora said he had come to court to claim my shares as my family have separated me and told me to get out. He said he had been on the land and that he was a son of Charles Kiogora. The others were shown their respective portions although he was not living on the land now and he feared for my life. He presented as my evidence in court the Affidavits of 30/10/2019 and a Supporting Affidavit of 22/12/19, and filed on 13/1/2020).
20. On cross-examination by Florence Naitore Kiogora, the petitioner herein, he said, "I just want my portion where I was shown by my father not the whole shamba."
21. On cross-examination by Mr. Ngentu for the Interested Parties, he said:

"I am 35 years old. I was born in 1988. I have been living in Nairobi. I left the samba when there was disagreement. I used to live at Meru at Mbuuri at my father's shamba. My father is Charles Kiogora. I lived on the same shamba where my grandfather lived. The land belonged to our grandfather. We lived with my grandfather Maritha. I lived with Maritha. She is my grandmother. She is the mother of my father. I do not have any document to show that I lived there. I left Maritha's place in 2010. I went to Nairobi in 2011. I have been living there at Nairobi. I have not been living on Maritha's shamba's since.

Succession cause No 170 of 2001 is on Estate of Miriti Kimondo. Charles Kiogora is not the deceased in this cause.

I was shown my portion by my father. It was on Maritha's Shamba which initially belonged to my grandfather. It was Plot No 3545. Plot 3545 is owned by a person I do not know. I know that the shamba belonged to my grandfather.

[Which is the portion that you were shown, do you know the number?]



I do not know the number of the parcel, which I was given, I was chased when I wanted to build another house on the plot. It was in 2011. They told me that I had no interest in the land.

Margaret Kiogora is my step mother, we never lived with her in the same house.

[Any evidence, that you were living with Margaret Kiogora?]

I do not have anything to show that I lived with Margaret Kiogora.

Charles Kiogora died in 2016.

[When did he show the shamba?]

He showed me the shamba in 2006. I was born in 1988. I was showed this land in 2006 when I was 18. He showed me the land. I did not know that the matter was before the court.

[What evidence to show that Charles Kiogora was your father?]

I have a picture when I was born. I did not produce it before the court. I had asked for a DNA testing in my Supporting Affidavit.

[Why did you not follow up the matter during the life of your father?]

I did not know that the family would go against me. From 2011 to 2016 is 5 years. It is the family that refused me after my father died. Before that, I did not know about court matters. I was informed about the case from friends to my mother. She was Kananu but she is deceased. I do not know who filed the case in 2001.

[Florence Naitore filed case in 2001]

It is not true that I did not know about the case because I was not a child of the deceased. I have sisters who are children of Charles Kiogora. They have not claimed to be heirs of Charles Kiogora. I had asked the court to order for DNA testing.

[Why do you wait for the family of Charles Kiogora to file succession proceedings on the Estate of Charles Kiogora] Why have you not filed a citation?

When I got to know that they want to sell the part that I had been shown, that is when I came to court.

What is your position?

My father pointed the portion. I was with my grandmother from Nyeri who had come to visit me. She is now deceased. I told the administrator. I do not know whether the Administrator stated my name in the Succession proceedings.

Where did you go to school?

I started at Kinoru Meru, I then went Ndumbuni Primary School in Nyeri County. [From 1988-2010] You stayed at Mbuuni?]

My mother used to bring me back to Mbuuni during school holidays. I started at Kinoru, Meru in nurse school. I do not know the distance from Kinoru to Margaret's shamba. It is not far. It is about 20-minute walk. It is my mother who used to take me to school. She had rented a house. I used to live with my grandmother. I was not living with my mother who lived at a rented place. My father used to come for me. I do not recall when Kimondo died. It is my father who used to carry me on the shoulder and take me to school. My father worked as Agriculture Officer. He taught other people about Agriculture. He dealt with agricultural



matters. In 2011, my father was not working. He had been suspended. I know he used to go to Nanyuki. I do not know whether he was transferred. I did not follow about my father's work affairs. I went to Ndumbuni Primary School. I do not recall. I went there at class 2.

[Who did you stay with?

I stayed with my grandmother from my mother's side. My mother was staying at Meru. I used to live within Meru when I finished class 8 in 2006.

Charles Kiogora had other children. I lived with my grandmother, but I never lived with the children. Maritha and Kiogora lived on the same land. I used to see Mutuma and Samuel. I have ever eaten at Margaret's. Margaret lived with my sister, Doris and Mary.

[Who is the first child of Kiogora with Margaret?]

I know her as Kathure, I do not know their other names, They are older than me. I know the children of Margret with Kiogora but I do not know how many they are. Did you stay with Maritha and Doris with Margaret. The land was one piece. It was small and I could go to all parts. Doris is not born of my mother. My sisters are Lucy Wambui and Ann Njambi. Lucy Wambui and I are twins. At the time that I lived with Maritha, Lucy stayed with my mother. Ann also stayed with mother. Lucy used to come and stay with me at times at Maritha's. There was no complain. Charles Kiogora was living well with his mother Maritha. This is when I was a small child.

[Why did you not live together?]

I did not see any conflict as I was a small child.

[Who paid school fees?]

My father paid school fees.

[Any documents on payment of fees, payment by you alleged father?]

I have not brought any evidence of the said payment.”

22. On re-examination, OW1 said of lack of supporting documents:

“I was a young child, I only pray that the court looks at a photograph that my mother give me.”

23. The Court made directions that a Further Affidavit of 15/6/23 was filed by the 4<sup>th</sup> Objector/applicant without leave of court should be expunged from the record and that as the photograph sought to be produced at the cross-examination hearing had not served as a document on the other parties, the same could not be adduced as evidence.

24. On the part of the 1-3 Objectors/Interested Parties as a witness on the matter of the application by Erick Mwangi Kiogora dated 30/10/2019, the widow of Charles Kiogora was called.

25. Pw1 Margaret Kiogora testified and relied on her Affidavit of 26/6/2020 as her evidence-in-chief together with List of Interested Party's documents of 25/11/2021, and prayed that the documents be produced as exhibits, duly marked Interested Parties' Ex. 1-5.

26. On cross-examination by the Petitioner Florence Naitore she said:

“[Is it true that you used to give food to Eric as he has stated in his affidavits.]

It is not true. They are laying accusations on me.



[Is it true that Mwangi was staying with you?]

It is not true that Mwangi used to reside on my place.

It is true you are the one who went for Eric Mwangi from Nyeri.

On 17/9/2016 my husband called all his children and said that he wanted to meet all of them on the weekend of 18/9/2016. They arrived at 12:00 noon, and he called the Sub-Chief by his phone. The Sub-Chief came. The discussion was on the land that we are talking about. Naitore, the Petitioner was given ¼ ACRE and Stella also got ¼ acre. The ½ acre remained. The ½ acre that remained and my husband realized that he had not given anything to the 5 daughters who remained. The deceased told his children that he had given me mandate to sell the ½ acre and the funds to be given to the 5 children at 50,000/= each.

As the meeting was going on one of the sons asked whether there was a family of the deceased out there that was likely to bring issues afterwards. Chaos erupted. The deceased said the children who were there at the meeting were the one who were helping him and he did not know any other out there. These are the children who were taking care of him and he did not know of any the children. The deceased died later that night.

After a month, I looked for shopping to visit my daughter Florence Naitore at Gitoro. Florence had grabbed land from the deceased and he did not know. I went to her because she was the administrator and my husband had said some property should be sold.

We went along with her for about 3 years with regard to the succession issues. I was asked how many children of the deceased were alive and I said there were two Duncan Mwobobia and Charles Kiogora.

You grabbed the land of the deceased. I do not recall the number. I do not recall which year. I am not educated. Yes, you are a child of Charles Kiogora. I found you when you were a little girl of about 2 years. You have been brought up at both your grandparents and at my place.”

27. On cross-examination by Eric Mwangi, PW1 said:

“I have never seen you. The reason I say it was Naitore who came for you from Nyeri is that when we came to court we found you at the court. Who had told you that we would be in court?

I do not anything to show that Naitore came for you. You were not at the meeting called by the deceased.

[It is put to witness that Eric stayed with them]

It is not true that you came to live with us.

[My father knew he had another family outside?]

The deceased said he only knew of the family and children who were there at the meeting. The Chief also wrote that down.

[Sub-Area Kaume?]

I did not know of any Sub-area called Kaume.

Did you know it was your son who was asked by my father to take me to the Sub-Chief to get an Identity Card?

I do not know about that. I never saw you.



You are not a child of Charles Kiogora. My husband did not tell me about any other child.

[If I request for your DNA that I am a Charles Kiogora's son?]

I would never agree because I was never told that you were his child. I cannot accept because my husband did not want chaos and he did not mention any other family. He never wanted court cases, and he said the child he knew were there.

[Where did I get my National Identity Card?]

I do not know. I do not agree that it was my husband who gave you his documents to assist in obtaining Identity Card.

28. On re-examination by Mr. Ng'entu for the Interested Parties PW1 said:

“The Meeting of 18/9/2016. It was called on 17/9/2016 by telephone call. There were Minutes of the meeting. It was the Sub-Chief who went with the document. Charles Kiogora signed the documents IPEX No 4. The Sub-Chief stamped minutes. Everyone else also signed.

Eric Mwangi was not there when Charles Kiogora was in hospital. The deceased was unwell for 5 years and I did not see the applicant at any time, He also did not come for the deceased's burial.”

29. Counsel for the Interested Party indicated that he would rely on the evidence without making any written submissions.

30. Despite opportunity given to the Objector/applicant to file written submissions, the applicant on 25/7/2024 indicated to court that he now wished to rely solely on the Evidence given before the Court, ruling was reserved for 22/7/2024.

31. The issue before the Court is whether the Objector/Applicant is entitled to object to the making of the Grant herein and the distribution of the Estate of Charles Kiogora under this Cause.

## **Determination**

### **Findings**

32. At the outset, the Court notes that this is the Succession Cause in respect of the Estate of M'Miriti Kimondo while the dispute in the applications the subject of this ruling relates to the distribution of the Estate of Charles Kiogora Miriti, a son of the deceased herein. The claimant is a person claiming to be a biological son of the deceased and he has sued the administrator of the Estate of M'Miriti Kimondo and the beneficiaries of that estate.

33. The applicant has not shown that he was gifted the portion of land he claims because it was not shown that in 2011, when the applicant's alleged deceased father showed him the land, he had capacity to dispose his share of the estate of the Deceased herein, the Grant of Letters of Administration herein having first been confirmed by Makau J. on 2/7/2014.

34. If the applicant is a child of the deceased, he is entitled to inherit his father as would be his siblings if also children of the deceased Charles Kiogora Miriti. This is subject to proof in the appropriate proceedings for the succession of the estate of Charles Kiogora Miriti and not the estate of M'Miriti Kimondo herein.



35. If applicant was not a biological child of the deceased but one adopted and supported by the deceased during his life-time, he could file a section 26 [of the [Law of Succession Act](#)], application for provision of a dependant in a relevant Succession Cause for administration and distribution of the Estate of Charles Kiogora, deceased.
36. There is no sufficient evidence of collusion between the 4<sup>th</sup> Objector/applicant and the Administrator, as charged by the deceased Charles Kiogora's widow, 1<sup>st</sup> Objector herein. Collusion is a serious charge, which does require, on a balance of probabilities standard of proof, cogent and compelling evidence to lead the court into a finding that it was more likely than not that the Objector and the Administrator had colluded.
37. On a balance of probabilities on the evidence presented before this court, the 4<sup>th</sup> Applicant has prima facie an interest in the estate of Charles Kiogora Miriti in view of the events surrounding his getting of an Identity Card with surname of Kiogora and the fact that the 1<sup>st</sup> respondent had to call a family meeting to determine whether the 4<sup>th</sup> applicant had an interest in the estate of her deceased husband having been shown such portion of land prior to the deceased's death.
38. The fact that her family as shown in minutes of the meeting presented in court found that the 4<sup>th</sup> applicant "Eric Mwangi is a stranger in our family and that he is not entitled to any share of my late husband estate since my late husband had pronounced himself on how he wanted his estate inherited vide his will dated 18th September 2016", does not make it so in law.
39. If there was such a Will by the deceased Charles Kiogora which did not make provision for some of his children, they as children/dependants could sue for adequate provision in terms of sections 26 and 29 of the [Law of Succession Act](#).

### **Remedy**

40. The remedy in this situation appears to call for an order preserving the portion of the estate that is distributed to Charles Kiogora Miriti, the deceased son of the Deceased herein, for purposes of proceedings, by any person including the 4<sup>th</sup> applicant, which may be filed with regard to that estate in accordance with the [Law of Succession Act](#). For that purpose, any subdivisions of the deceased's assets distributed to Charles Kiogora Miriti must be restored into his name and held by the Estate of Charles Kiogora Miriti for distribution according to confirmed Grant to be obtained in proceedings filed in that behalf.
41. The Court is aware that the 1<sup>st</sup> Objector filed and obtained Grant of Letters of Administration ad Litem to the estate of Charles Kiogora Miriti but no petition for a full Grant had been made. The said Administrator will file such a petition within 30 days failing which the 4<sup>th</sup> Applicant may file for Grant of Letters of Administration Intestate to the Estate of Charles Kiogora Miriti (deceased). It is in those proceedings that the question of the 4<sup>th</sup> applicant's entitlement to inherit the deceased as his child will properly be heard and determined. This court shall under section 45 of the [Law of Succession Act](#) preserve the said estate property by appropriate orders.

### **Orders**

42. Accordingly, for the reasons set out above, the Court finds that there is no merit in the 4<sup>th</sup> Objector's application for revocation of the Grant herein and it is declined.



43. The Administrator ad litem to the Estate of Charles Kiogora Miriti shall within 30 days file for the full grant of Letters of Administration Intestate to the Estate of Charles Kiogora Miriti, and in default the 4<sup>th</sup> applicant herein may file for the Grant of Letters of Administration of the Estate.
44. The applicant is at liberty to move the Court in such proceedings for the Grant of Letters of Administration to the estate of Charles Kiogora Miriti, deceased, for a determination that he is entitled to a share of the assets of the Estate of M’Miriti Kimondo that devolve to the estate his alleged father Charles Kiogora Miriti, deceased, among his other property.
45. In interests of preservation of the Estate of the deceased Charles Kiogora Miriti, the Court makes an order that the portions of land shown to devolve to the said Charles Kiogora Miriti in the Rectified Certificate of Confirmed Grant dated 19/6/2019, as set out in paragraph 1 herein, that is to say-
  1. LR Ntima/Ntakira/2461  
Charles Kiogora Miriti.....0.63 Acres
  2. Ntima/Ntakira/2463  
Charles Kiogora Miriti .....3/4 Acres
 shall revert and be held in name of the Estate of Charles Kiogora Miriti Deceased.
46. In the meantime, there shall be inhibitions to any dealings with the respective subdivisions carved out of the deceased’s share in the properties, and prayers No 1 and 3 respectively of the applications dated 29/10/2019 and 30/10/2019 are granted.
47. There shall be liberty to apply for any affected/interested party.
48. There shall be no order as to costs.

Order accordingly.

**DATED AND DELIVERED ON THIS 22<sup>ND</sup> DAY OF AUGUST 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances

Mr. Ng’entu for the 1-3 Interested Parties.

Ms. Florence Naitore, Petitioner/Administrator in person.

Mr. Eric Mwangi Kiogora, Objector in person, initially represented by Mr. Brian Mwirigi advocate instructed by Elijah Ogoti & Co. Advocates.

