



REPUBLIC OF KENYA



In re Estate of Joseph M’ithili Kaira (Deceased) (Succession Cause 39 of 1998) [2023] KEHC 310 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEHC 310 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 39 OF 1998
TW CHERERE, J
JANUARY 26, 2023
IN THE MATTER OF THE ESTATE OF JOSEPH M’ITHILI KAIRA (DECEASED)**

BETWEEN

FLORENCE MAKENA MUCHIRI APPLICANT

AND

ARIN NKATHA RESPONDENT

AND

FLORENCE MAKENA MUCHIRI INTERESTED PARTY

RULING

Background

1. Joseph M’ithili Kaira (Deceased) died on July 20, 1996. His son Stanley Mugambi M’ithili applied for letters of administration which was issued on August 11, 1998 and in support thereof listed the estate of deceased as comprised in the following assets.
 - i. Antubetwe/Njoune/648
 - ii. Antubetwe/Njoune/1607
 - iii. Antubetwe/Njoune/1980
2. He also listed the deceased’s beneficiaries as follows:
 1. Stanley Mugambi M’ithili
 2. Isaiah Kalawa M’ithili
 3. Isaac Kaberia M’ithili



4. Elizabeth Nkatha
 5. Esther Karamana
 6. Florence Makena
 7. Maria Nkirote
3. By a certificate of confirmation of grant dated April 19, 1999 and the estate comprised in the three land parcels was distributed wholly to Stanley Mugambi M’Ithili.
4. Subsequently, Stanley Mugambi M’Ithili died on June 20, 2007 and Florence Makena Muchiri (Applicant) petitioned for letters of administration for his estate comprised in Antubetwe/Njoune/648. Arin Nkatha (Respondent) successfully applied for revocation of the letters of administration issued to the Applicant and the court by a ruling dated May 8, 2019 ruled that Stanley’s estate comprising in Antubetwe/Njoune/648 belonged to Arin Nkatha (Respondent) and her two children.
5. By summons dated February 16, 2021, Florence Makena Muchiri (Applicant) seeks the following orders:
1. Stay of confirmation of grant and all consequential orders issued to Arin Nkatha (Respondent) in Meru High Court Succession No 113 of 2008
 2. Revocation of certificate of confirmation of grant issued to Stanley Mugambi M’Ithili on April 19, 2019 in this cause
 3. Revocation of certificate of confirmation of grant issued to Arin Nkatha (Respondent) in Meru High Court Succession No 113 of 2008
 4. Cancellation of titles emanating from Antubetwe/Njoune/1980 ie 3551 and 3552 and Antubetwe/Njoune/648 and Antubetwe/Njoune/1607 and restore them to the name of Joseph M’Ithili Kaira (Deceased)

Applicant’s case

6. Protestor stated that his brother Stanley Mugambi M’Ithili (deceased) who was Petitioner’s husband filed this cause secretly and disinherit her and 6 others of her siblings of their father’s estate comprised in Antubetwe/Njoune/648, Antubetwe/Njoune/1607 and Antubetwe/Njoune/1980. She faulted the Petitioner of complicating the matter by subsequently transferring Antubetwe/Njoune/648 to herself after the death of her husband Stanley Mugambi M’Ithili (deceased) and threatening to evict the family from therefrom.

Respondent’s case

7. Respondent conceded that she was widow to Stanley Mugambi M’Ithili (deceased) who was deceased’s son and Applicant’s brother and that she had no objection to distribution of deceased’s estate equally to his children.

Analysis and Determination

8. I have considered the evidence on record. It on record that the court on the dispute concerning Antubetwe/Njoune/648 was determined in a judgment dated May 8, 2019 rendered In re Estate of Stanley Mugambi M’ithili (Deceased) (Meru Succession Cause No 113 of 2008) and the land



subsequently distributed to the beneficiaries of Stanley Mugambi M’Ithili by a Certificate of Confirmation of Grant dated 0th March, 2020.

9. There is no evidence that the judgment *In re Estate of Stanley Mugambi M’ithili (Deceased)* (Meru Succession Cause No 113 of 2008) was appealed to or set aside and its remains valid and binding on the parties herein. By asking the court to revoke the grant in *In re Estate of Stanley Mugambi M’ithili (Deceased)* (Meru Succession Cause No 113 of 2008) and to cancel title emanating therefrom namely Antubetwe/Njohne/3551 and 3552, Applicant is re-litigating on a matter that has already been determined. For the reason that this court cannot sit on appeal in its own judgment, this court declines an invitation to interfere with the court’s decision concerning Antubetwe/Njohne/648.
10. Having so ruled, what remains for determination is distribution of Antubetwe/Njohne/1607 and Antubetwe/Njohne/1980. Section 38 of the *Law of Succession Act* provides:

“Where an intestate has left a surviving child or children but no spouse the net estate shall subject to the provisions of Section 41 and 42 devolve upon the surviving child, if there be only one or shall be equally divided among the surviving children.”
11. By distributing the said assets to himself to the exclusion of his siblings, Stanley Mugambi M’Ithili (deceased) acted fraudulently and the grant dated April 19, 1999 as far as it relates to Antubetwe/Njohne/1607 and Antubetwe/Njohne/1980 cannot be allowed to stand.
12. From the foregoing, this court makes the following orders:
 1. Matters relating to LR No Antubetwe/Njohne/648 have already been determined *In re Estate of Stanley Mugambi M’ithili (Deceased)* (Meru Succession Cause No 113 of 2008) and are therefore *res judicata*.
 2. The land Registrar Meru is directed to cancel titles emanating from subdivision of Antubetwe/Njohne/1980 i.e Antubetwe/Njohne/3551 and Antubetwe/Njohne /3552 and revert them to the name of the deceased Joseph M’ithili Kaira.
 3. Florence Makena Muchiri is hereby appointed as Administrator of deceased’s estate in place of Stanley Mugambi M’Ithili (deceased).
 4. Letters of administration shall issue forthwith.
 5. Certificate of Confirmation of Grant issued to Stanley Mugambi M’Ithili on April 19, 2019 in so far as it relates to Antubetwe/Njohne/1607 and Antubetwe/Njohne/1980 is hereby revoked.
 6. Florence Makena Muchiri is directed to within 30 days of this order apply for distribution of Antubetwe/Njohne/1607 and Antubetwe/Njohne/1980 after identifying the beneficiaries and their respective shares.
 7. Mention on March 30, 2023 to confirm compliance with the orders herein and for further orders.

DATED AT MERU THIS 26TH DAY OF JANUARY, 2023.

TW CHERERE

JUDGE

Appearance



Court assistant - Morris Kinoti

For Applicant - Mr Arimi for Mutwiri Arimi & Co Advocates

For Respondent - N/A for Mutembei & Kimathi Advocates

