



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of M'mbogori Kiaira alias Mbogori Kiaira (Deceased) (Succession Cause 4 of 2018) [2023] KEHC 2506 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 4 OF 2018**

EM MURIITHI, J

MARCH 28, 2023

**(FORMERLY CHUKA H.C SUCC CAUSE NO. 418 OF
2015 & SRMCC SUCCESSION CAUSE NO. 221 OF 2012)**

**IN THE MATTER OF THE ESTATE OF M'MBOGORI
KIAIRA ALIAS MBOGORI KIAIRA (DECEASED)**

BETWEEN

EDITH NKATHA MBOGORI PETITIONER

AND

GEOFFREY KIRIMI MBOGORI OBJECTOR

RULING

1. The deceased herein, M'Mbogori Kiaira Alias Mbogori Kiaira died in 1968, survived by the following beneficiaries:-
 - a) Muthoni Mbogori - widow (deceased)
 - b) Joseph Gituma - son
 - c) Salome Nchoro - daughter (deceased)
 - d) Francis Nteere – son (deceased)
 - e) Geoffrey Kirimi - son
 - f) Edith Nkatha - daughter
2. The petitioner/respondent was issued with a grant of letters of administration intestate on September 17, 2012. In her affidavit in support of the summons for confirmation of grant, the petitioner listed



herself and Ian Kirimi, a grandson to the deceased, as the only beneficiaries, and the grant was confirmed on February 10, 2016.

3. The Court (A Mabeya J) in revoking that grant on February 21, 2019 ordered that:

' All and any entry made on title number Abothuguchi/Kithirune/612 is hereby expunged and the property ordered to revert back to the name of the deceased. A fresh grant hereby issues to Edith Nkatha Mbogori and Geoffrey Kirimi Mbogori jointly. The joint administrators to apply for confirmation forthwith, if they agree. However, if there is no agreement, any of them is at liberty to file and serve an application for confirmation within 30 days of this ruling with the aggrieved party having leave to protest thereto.'
4. On April 8, 2019, Geoffrey Kirimi Mbogori, the applicant herein applied for confirmation of the grant jointly issued to him and Edith Nkatha Mbogori, the respondent herein. In that application, the applicant listed himself, Joseph Gituma M'Mbogori, Salome Ncoro(deceased), Francis Nteere M'Mbogori (deceased) and Edith Nkatha as the dependants of the deceased. He proposed that Abothuguchi/Kithirune/602 (henceforth called the estate asset) be distributed equally among the 5 beneficiaries.
5. On September 23, 2019, the respondent filed an affidavit protesting to the confirmation of the grant as proposed by the applicant. The respondent contended that the estate asset was hers, as shown by the certificate of official search exhibited by the applicant. She contended that the deceased had other properties namely Nturukuma/Nanyuki No 1639 and a plot, Nturukuma/Nanyuki No 133 and a plot, Nanyuki Marurura 8/1194 (Nturukuma), Mwichwiri 1 Naromoro measuring 6 acres and Katheri Nanyuki measuring 6 acres. However, some of those properties listed herein above were sold to third parties while others were given to the applicant. She accused the applicant of material non-disclosure and urged the court to disallow his application for confirmation.
6. The respondent swore a further affidavit in opposition to the application for confirmation on November 4, 2019.
7. On September 29, 2020, the court directed the parties to file witness statements and the protest to be heard by way of viva voce evidence.

The Statements

8. The applicant, in his statement dated September 16, 2020 fully supported his proposed mode of distribution.
9. John Kabiti M'Turuchiu and Lawrence Mutuma Mugambi in their statements dated September 16, 2020 stated that the deceased had no other land save for the estate asset. They stated that the children of the deceased were living on the estate asset and had even constructed semi-permanent houses thereon. They stated that the clan had shown the children of the deceased, including the respondent, where to occupy, but the respondent demolished her house and moved to Meru Town.
10. The respondent, in her statement dated November 25, 2021 stated that she was given a share of the estate asset while the applicant was given Nanyuki Marura Block 8/1194. The applicant consented to the mode of distribution without any coercion, and his claim is only motivated by greed of wanting to disinherit her. She has been peacefully living and cultivating on the estate asset and has also built houses thereon.
11. Timothy Mwenda and Jospine Makena also recorded statements on November 25, 2021 echoing the respondent's position.



12. There is a statement of the Abombiti Clan concerning the estate of the deceased herein. The clan confirms that the deceased was survived by 5 children and he left behind 6 assets.

Submissions

13. The applicant accuses the respondent of coming to court with mere allegations and hearsays and no evidence to prove them. He urges that the respondent's claim that she should be the only one to inherit the estate asset goes against the provisions of the law, is selfish and is aimed at disinheriting all other beneficiaries. He urges that the mode of distribution set out in the summons for confirmation of grant is the most appropriate as it includes all the rightful beneficiaries including the respondent. He urges the court to dismiss the protest and confirm the grant as per the summons of confirmation of grant dated March 21, 2019.
14. The respondent did not file any submissions.

Analysis and Determination

15. The issues for determination are what forms the assets of the deceased and how the same ought to be distributed.
16. What has come out clearly from the statements on record is that the deceased, who died intestate was survived by 5 children.
17. Whilst the applicant contends that the deceased only had one property, which is the estate asset, the respondent affirms that the deceased had other properties, which she has listed in her statement. The court notes that when the respondent first petitioned for grant of letters of administration intestate, which was subsequently revoked, she only listed the estate asset as the only property due for distribution.
18. This court thus finds that the deceased indeed owned only the estate asset.
19. The parties herein are conflicted on how the estate asset should be distributed. The applicant proposes that the same ought to be shared equally among the 5 children of the deceased, while the respondent wants the estate asset given wholly to her. The respondent seems to cling on to the mistaken belief that the grant she had been initially issued with is still valid. She even obtained title to the estate asset using the said grant. The truth of the matter is that the grant initially issued to the respondent was revoked by the court, and therefore the consequential registration of title using the revoked grant automatically becomes an illegality.
20. Section 38 of the *Law of Succession Act* provides that:

' 38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.'

Orders

21. Accordingly, for the reasons set out above, the Respondent's protest dated September 23, 2019 is hereby struck out, and the court makes the following specific orders:



- a. The grant jointly issued to the applicant and the respondent on February 21, 2019 is hereby confirmed in terms of paragraph 7 of the applicant's affidavit in support of the summons for confirmation of grant dated March 21, 2019.
- b. LR No Abothuguchi/Kithirune/602 measuring 1.57 Ha shall be shared equally as follows:
 - i. Joseph Gituma M'Mbogori – 0.775 Acres
 - ii. Newton Kimathi Mutwiri (on behalf of Salome Ncoro-deceased) – 0.775 Acres
 - iii. Silas Gikunda (on behalf of Francis Nteere M'Mbogori-deceased) – 0.775 Acres
 - iv. Geoffrey Kiri Mbogori – 0.775 Acres
 - v. Edith Nkatha – 0.775 Acres

Order accordingly.

DATED AND DELIVERED ON THIS 28TH DAY OF MARCH, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Edith Nkatha Mbogori Petitioner in Person.

M/S Mbaabu M'Inoti & Co. Advocates for the Applicant.

