



REPUBLIC OF KENYA



**In re Estate of M’ugambi M’ukindia alias Mugambi S/O Mwaniki (Deceased)
(Succession Cause 282 of 2003) [2023] KEHC 18010 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 282 OF 2003
EM MURIITHI, J
MAY 31, 2023**

IN THE MATTER OF

JULIUS KATHURIMA PETITIONER

AND

PHILIS MWENDWA OBJECTOR

AND

SIMON GIKUNDA INTERESTED PARTY

LYDIA MUKIRI INTERESTED PARTY

SABELLA NAITORE INTERESTED PARTY

RULING

1. By Summons for revocation of grant under certificate of urgency dated 29/11/2021 pursuant to sections 47 & 76 of the [Law of Succession Act](#), Rules 44 & 73 of the [Probate and Administration Rules](#) and section 68 of the [Land Registration Act](#), the objector principally seeks revocation of the grant issued to the petitioner on 1/12/2003 and confirmed on 6/4/2005.
2. The grounds upon which the application is premised are set out on the face of it and the supporting affidavit of the objector sworn on even date. She avers that the estate herein belongs to her father who died on 17/2/1999. She accuses the petitioner of failing to seek and obtain her consent before filing this cause. Further, the petitioner did not see her consent and that of her late sister’s children during the confirmation of the grant, therefore she and her deceased sister were disinherited. The 1st interested party is now threatening to evict her from L.R No. Abothuguchi/Katheri/731, which will render her destitute. She avers that the filing of this cause and the eventual confirmation of the grant was marred with procedural malpractices, falsehoods, forgeries and outright discrimination.



3. The objector filed her statement dated 29/9/2022 averring that when her brother attempted to throw her out of her home, she protested and called the petitioner for assistance. However, she was shocked to learn from her brothers that their family land L.R No. Abothuguchi/Katheri/731 had been shared out in this cause in 2005. When she asked her brothers why they had decided to disinherit her, they indicated that since she was a married daughter of the deceased, she was not entitled to a share of her father's estate. A search of one of the properties of the deceased showed that it was registered in the petitioner's name on 26/9/2007, as the administrator. She was not aware of the filing of this cause and the signature appended to the consent to the confirmation of the grant is a forgery. Had she been aware of the date of the confirmation of the grant on 6/4/2005, she would have appeared in court and raised an objection to the mode of distribution as was proposed by the petitioner. She believes that the petitioner intentionally disinherited her from my father's estate on the basis of her sex and status in the society. She therefore urges the court to distribute the estate properties equally among herself, the petitioner, Simon Gikunda and Lydia Mukiri. She personally talked to her sister Sabella Naitore who indicated that she was not interested in getting a share of the deceased's estate, but in case she changes her mind, she can still be included to share the estate equally with all the beneficiaries.
4. The petitioner did not file any response to the application.

Submissions

5. The objector and the 3rd interested party submitted that the petitioner, despite acknowledging that the objector was a daughter of the deceased, failed to obtain her signature pursuant to the provisions of Rule 26 (2) of the *Probate and Administration Rules*. She urged that she was disinherited because she was not allocated any share of the estate. She urged that courts have in countless occasions abhorred discrimination against women during distribution of a person's estate, and cited *Mwongera Mugambi Rinturi & Anor v Josphine Kaarika & 2 Others* (2015) eKLR. She urged the court to revoke the grant, appoint her as the administratrix of the estate so that she can distribute it equally to all the children of the deceased.
6. The petitioner did not file any submissions.

Analysis and Determination

7. The singular issue for determination is whether the grant issued to the petitioner should be revoked.
8. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:- "A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
 - (a) that the proceedings to obtain the grant were defective in substance;
 - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or



(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or (e) that the grant has become useless and inoperative through subsequent circumstances.”

9. The beneficiaries of the deceased herein are listed in the chief’s letter dated 30/7/2003 as Zipporah Ngirote M’Mugambi – widow, Sabella Naitore - daughter (married), Margaret Muthoni - daughter (deceased), Julius Kathurima - son, Philis Mwendwa - daughter (married) and Simon Gikunda – son. Although the deceased left behind 6 beneficiaries, it appears from the certificate of confirmation of grant that Abothuguchi/Katheri/731 and L.R No. Gakwa/Kathurura/Block. 3 Mwichwiri/391 (henceforth called the estate properties) were only shared amongst Julius Kathurima, Simon Gikunda Mugambi and Zipporah Nkirote M’Mugambi.
10. The objector contends that she was completely disinherited from her father’s estate because she was not given any share of the estate.
11. The grant herein was confirmed way back on 6/4/2005 and this application was filed 29/11/2021, which is approximately 16 years down the line. The objector contends that had she been aware of these proceedings, she would have objected to the same.
12. There is no gainsaying that the objector is a daughter of the deceased, and she was therefore entitled to a share of her deceased father’s estate. It is observable that she was not given a share because of her sex and marital status. That is outright discrimination which is outlawed.
13. Section 29 (a) of the Law of Succession Act in recognizing children does not classify them on the basis of gender or marital status. Makhandia, J (as he then was) in Re Estate of Solomon Ngatia Kariuki (deceased) (2008) eKLR rendered himself *inter alia* thus:

“The Law of Succession Act does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased’s estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father’s estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father’s inheritance because they are likely to enjoy inheritance of their husband’s side of the family.”

Orders

14. Accordingly for the reasons set out above, Court finds that the Objector’s application dated 29/11/2021 is merited and it is allowed in the following terms:
 1. The grant of Letters of Administration Intestate issued to the petitioner on 1/12/2003 and confirmed on 6/4/2005 is hereby revoked.
 2. A fresh Grant of Letters of Administration Intestate to issue jointly to the Petitioner and the Objector.



3. Any party is at liberty to apply for confirmation of the grant within 60 days from the date herein.
15. There shall be no orders as to costs.
Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF MAY, 2023.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mwirigi K. Advocate for the Objector/Applicant.

N/A for Petitioner and Interested Parties.

