



**In re Estate of Johana Mwereria Thugura (Deceased) (Succession Cause
19 of 2015) [2023] KEHC 18463 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 19 OF 2015**

LW GITARI, J

MAY 30, 2023

(FORMERLY MERU HC SUCC CAUSE NO. 446 OF 2011)

BETWEEN

**FREDRICK MUTUA 1ST PROTESTOR
JOHN KINOTI JULIUS 2ND PROTESTOR
ELIUD NJERU JOHANA 3RD PROTESTOR
JULIUS MURIUKI 4TH PROTESTOR
JUSTINE KIAMBI MARETE 5TH PROTESTOR
EUSTACE MUGENDI NJERU 6TH PROTESTOR
TARSILLA MUKWANJIRU KIBAARA 7TH PROTESTOR
JANE WANJA MURIANKI 8TH PROTESTOR**

AND

**ALPHAXARD NDEGE 1ST ADMINISTRATOR
JULIUS NYERERE ERASTUS 2ND ADMINISTRATOR**

AND

LEONARD KIMATHI INTERESTED PARTY

RULING

1. This cause relates to the estate of the late Johana Mwereria Ithugura (deceased) who died intestate on December 25, 1997. Given the old age and long history of this matter a background of the same will suffice at this point.



2. The father of the 1st protestor herein, the late Mutua Mwereria lodged Chuka PMC succession cause No 112 of 2010 in his capacity as a son of the deceased. He was issued with a grant of letters of administration on December 20, 2010 and the same was confirmed on February 9, 2011 (the “initial grant”)
3. On August 17, 2016, the initial grant made to the late Mutua Mwereria was revoked by consent of the parties following an application for revocation by the 1st and 2nd administrators herein. A fresh grant was then issued to Alphaxard Ndege (the 1st administrator), Julius Nyerere Erastus (the 2nd administrator) and Fredrick Mutua (the 1st protestor) who were appointed as the administrators of the estate of the deceased.
4. Vide summons for confirmation of grant filed on April 4, 2017, the 1st and 2nd administrators consequently applied for confirmation of the grant made to them and gave a proposal on how the estate should be distributed. Their proposal was met by a protest from the 1st protestor herein through his affidavit sworn on May 10, 2017. He argued that the proposed mode of distribution was neither fair nor equitable. Subsequently, the protest was dismissed on December 11, 2017 for want of prosecution and the court confirmed the grant as proposed by the 1st and 2nd administrators.
5. The 1st protestor, together with the 2nd – 8th protestors herein, then moved the court *vide* summons for revocation of grant dated January 4, 2018. The application was determined by the ruling of this court (Hon Justice Limo) dated December 19, 2018. In the said ruling, the court revoked the grant that was confirmed on December 11, 2017 and the 1st and 2nd administrators herein were appointed as the new administrators of the estate of the deceased.
6. The 1st and 2nd administrators then filed for confirmation of the grant *vide* the summons for confirmation of grant dated April 1, 2019. The application for confirmation of the grant was met with resistance from the 1st – 4th protestors in their capacity as dependents of the deceased and the 5th – 8th protestors in their capacity as purchasers for value of portions of land in the deceased’s estate.
7. The protestors were heard by way of *viva voce* evidence.

The 1st And 2nd Administrators’ Case.

8. PW1 Alphaxard Ndege, who is the 1st administrator herein, stated that he is one of the sons of the deceased herein. According to him he won the case in Meru HCCNo. 66 of 1983 – Johana Mwereria vs Alphazard Ndege in which he claimed the land parcel No. L.R Igoji/Kiangua/976 measuring 4 acres and that he is the sole occupier of the said parcel of land to date. It is P.W 1’s case that the deceased had agreed that the said land parcel No. 976 should be distributed to P.w 1. In a supplementary affidavit sworn on 17th February, 2020 he annexed a decree in Meru High Court Civil case no. 66/1983 between him and the deceased herein and the deceased was ordered to transfer four acres to him. The parcel of land was not transferred to him but he has been in exclusive occupation of the land.
9. The 2nd administrator, Julius Nyerere Erastus, testified as P.w 2. He stated that the deceased’s estate should be distributed as per the mode of distribution proposed under paragraph 5 of the present summons of confirmation of grant. It was his testimony that he is the son of Erastus Gichobi who was the first born son of the deceased. That after his father died, he filed succession cause No. 257 of 1997 in Meru High Court where he named all the dependants of his late father. He thus prayed that the remaining property of the deceased be distributed equally to all the beneficiaries of the deceased.
10. The interested party, Leornard Kimathi, was joined in these proceedings by a ruling of this court that was issued on 13th October, 2020. He testified on 14th September, 2021 as P.w 3. The interested party is



the grandson of the deceased as he is the son to the late Henry Miriti a son of the deceased. According to P.W 3 the deceased had subdivided his land before he died. That the late Erastus Gichobi, father to the 2nd administrator (P.W 2) was given 3.5 acres of land the same being L.R NO. Igoji/ Kiangua/940 measuring 3 ½ acres. That the only property that was not distributed is Igoji/Kiangua/367 out of which Muchemi Johana was given one acre. Eliud Njeru was not given a definite share and that he should be given four acres. The rest be shared amongst the other beneficiaries apart from Mutua Mwereria as he had been given seven acres.

The Protestor's Case.

11. In support of the protestors' case, one Murithi M'Andiri testified as D.w 1 who introduced himself as a clan member of "Nkunu" clan which the family of the deceased comes from. It was his testimony that the deceased called three (3) elders, him included, and informed them that he had distributed land to all his sons. He adopted as his evidence the affidavit sworn on 26th February, 2020 where he avers that land parcel No. Igoji/Kiangua/367 was to be shared between two sons, the late Mutua Mwereria, Eliud Njeru and Mucheru was given land parcel No. Igoji/Kiangua/940. That Mutua was to get parcel No. 367.
12. DW 2 was Julius Muriuki Johana, a son of the deceased and the 4th protestor herein. According to him the deceased subdivided and distributed his land to his sons by giving Ndege (the 1st administrator) 4 acres giving D.w 2 and the late Henry 6 acres, and that the deceased set aside 8 acres for himself. That Mutua did not receive land but the deceased decided to give Mutua the 8 acres to share with Micheni (deceased's grandson) and Njeru.
13. D.w 3 was Tarsial Mukwanjiru (the 7th protestor herein). She testified that she purchased land measuring 1.8 acres from John Kinoti (the 2nd protestor herein). Further, that the parcel of land she purchased was a resultant of the subdivision of the deceased's land. John Kinoti was a son of Julius Nyerere (2nd administrator). She obtained a title deed and has developed the land. That is Parcel No. Igoji/Kiangua/2766.
14. D.w 4 was Eustace Mugendi Njeru (the 6th protestor herein). It was his case that he was entitled to land parcel No. L.R. no. Igoji/Kiangua/2765, which measures 0.5 acres as he had purchased the same from one Cosmas who in turn had acquired the land from John Kinoti (the 2nd protestor herein)
15. The 5th protestor, Justine Kiambi Marete, testified as D.W 5. He equally claimed a portion of the estate of a purchaser for value. Specifically, he claims land parcel No.LR. NO. Igoji/Kiangua 2651 measuring 1.5 acres and which he states he purchased in 2011 from Mutua Mwereria who was the original administrator of the estate of the deceased and is also deceased.
16. The 1st protestor, Fredrick Mutua, testified as D.W 6. He stated that he is the grandson of the deceased as his father was the late Mutua Mwereria, a son of the deceased. It was D.w 7's testimony that his late father was given 3.5 acres before he died in 2011. Further that the 1st administrator was given land parcel No. LR. NO. Igoji Kiangua/976 and money collected from a shop situated in plot No. 19 Kiangua Market. That the shop was later sold to John Kinoti and that Julius Muiruki got 3 acres. D.w 6 further testified that L.R NO. Igoji/Kiangua/940 was given to the late Erastus Gichobi.
17. Finally, John Kinoti (the 2nd protestor herein testified as D.W 7. He stated that he is a grandson of the deceased as he is the son of Julius Muriuki (the 4th protestor) who is a son of the deceased. D.w 7 claims that he is the one who developed plot No. 19 Kiangua Market after the same was sold to him in 2011. That the proceeds of the sale of the said land is what was used to subdivide the estate after the confirmation of the initial grant. D.w 7 avers that the shop that is situate in plot no. 19 Kiangua



Market was not in use when the deceased died and that he has undertaken extensive developments on the said plot of land. The summons was canvassed by way of written submissions. The counsel on the record for the protestors Muthoga and Gaturu & company Advocates filed their written submissions on 11th October, 2022. They have urged this court to consider two issues. These are-;

1. Whether the estate of the late Mwereria Itungura should be re-distributed as proposed in the affidavit of the administrators and the interested party or remain as originally distributed.
 2. Whether the rights acquired by the 5-8 protestors are protected under the law.
18. The protestors have urged the court to find that to order a redistribution as proposed by the administrators would cause chaos on the suit land since both parties have settled on their portions for a period of over fifteen years and the 5th – 8th protestors have demonstrably developed the properties openly for that period without interference and disturbance by any members of the family. The protestor has therefore urged the court to dismiss the summons for confirmation of grant dated 1st April 2019.
19. The applicant Leonard Kimathi filed submissions and addressed the issue of distribution of the estate. According to him, Land parcel No. Igoji/Kiangua/976 should go to Alphaxard Ndege. This land parcel measures 4 acres. Land parcel No. Igoji/Kiangua to go to Julius Muiuki and Henry Miriti (deceased) who is husband to Lydia Kajuju. The parcel measures six acres. -- Plot No. 19 Kiangua Market be shared equally. Igoji/Kiangua/938 belongs to Mutua Mwereia. Igoji/Kiangua/940 measuring 3 ½ acres to go to Erastus Gichobi who is deceased but survived by Julius Nyerere Igoji/Kiangua/367
- i) Julius Nyerere 1/2 (so that he gets a total of 4 acres.)
 - ii) Leonard Kimathi s/o Henry Miriti 1 acre to make a total of 4 acres.
 - iii) Micheni Johana 1.5 acres (grandson)
 - iv) James Muriuki 1 acre
 - v) Harriet Nkuene 0.5 acres.

According to the applicant the 5th – 8th protestors are strangers to the estate and should look elsewhere.

Submissions By Administrators

20. The submissions were filed by Kaumbi and company Advocates. According to the administrators, Mutua Mwereria a son of the deceased filed succession cause No. 112/2010 in the Principal Magistrate's court at Chuka. He filed the succession cause secretly without involving all the beneficiaries of the estate of the deceased. The grant was issued on 20th December, 2010 and confirmed on 9th February, 2011 but was subsequently revoked. It is the contention by the administrators that the original administrator intermeddled with the estate and sold parcels of land to 5 – 8 protestors. The administrators contend that the contention by the protestors that Erastus Gichobi was gifted land parcel No Igoji/Kiangua/940 by the deceased is not true as he had purchased the said land. They contend that it is not correct to say that Erastus Gichobi is not entitled to a share of the estate of the deceased. The administrators further submit that land parcel No. Igoji/Kiangua/976 was not available for distribution as it was decreed by an order of the court to be registered in the name of Alphaxard Ndege. That it is also misleading that Alphaxard was supposed to give half an acre (½) to one of the beneficiaries. It is their contention that plot NO. 19 Kiangua market should be distributed equally to all the beneficiaries. That the claim by the 2nd protestor that he is a creditor to the estate is unfounded.



21. It is the contention by the administrators that the claims by 5-8 protestors cannot stand as the sellers could not pass a good title. He relies on Section 23 of the [sale of goods Act](#) and argues that the rationale behind the principle is that whoever owns the legal title to property holds the title until he or she decides to transfer it to someone else and an authorized transfer of the title by any other person other than the owner has no legal effect. They have also relied on the case of *Mcfoy vs United Africa co. Ltd* (1961) 3 ALL ER 1169 where Lord denning stated that “if an act is void then it is in law a nullity”. It is their contention that save for the protestors who bought land from Eliud Njeru and Micheni Johana none of the other protestors have acquired a good title and the properties should revert to the estate to be redistributed to other beneficiaries. They urge the court to order that the distribution of the estate be as per the affidavit of Julius Nyerere sworn on 1st April 2019.

ANALYSIS

22. The succession cause relating to the estate of the deceased was initially filed in succession cause No. 112/2010 Chuka in the Principal Magistrate’s court at Chuka. The grant was confirmed and the estate was distributed as follows Mutua Mwereria – LR Igoji/Kiangua/367 – 3.50 acres. Eliud Njeru Johana – LR Igoji/Kiangua/367 - 3.50 acres. Micheni Johana LR NO. Igoji/Kiangua//367 1.00 acre Julius Muriuki LR Igoji/Kiangua/980 3.0 acres Lydia Kajuju Henry LR. NO. Igoji/Kiangua/980 3.0 Acres. Aphaxard Ndege LR. No. Igoji/Kiangua/976 3.50 acres Lydia Kajuju Henry LR No. Igoji/Kiangua/976 0.50 ACRES John Kinoti Julius & Julius Muriuki - Plot No. 19 Kiangua Market jointly.
23. This grant was revoked by consent on 17th August 2015 and a fresh grant was issued to Alphaxard Ndege, Julius Nyerere Erastus and Fredrick Mutua. The three proceeded to apply for confirmation of the grant and gave a proposed mode of distribution of the estate. Fredrick Mutua was not agreeable to the proposed mode of distribution and filed an affidavit of protest sworn on 10th May 2017. The protest was however not heard on merit due to none attendance by the protestors. The court proceeded and confirmed the said grant.
24. The protestor (Fredrick Mutua) moved the court together with seven other applicants seeking an order for revocation of the said grant. *Vide* a ruling of this court, by Justice Limo on 19th December 2018 the said grant was revoked. Alphaxard Ndege and Julius Nyerere were appointed as the administrators of the estate. They moved the court with a summons for confirmation of grant and proposed a mode of distribution. This led to the filing of the protests by the eight protestors. The matter is before this court for the determination of the mode of distribution of the estate of the deceased. The two issues which arise for determination are-;
- i. Whether the estate of the deceased should be redistributed as proposed in the affidavit of the administrators and the interested parties or remain as originally distributed.
 - ii. Whether the titles acquired by 5 – 8 protestors should be revoked and or cancelled.
25. I will proceed to consider these issues.

I. Whether the estate should be redistributed

The ruling by Justice Limo dated 19th December 2018 was largely based on the claims by the interested parties who had brought land which formed part of the estate of the deceased. The interested parties bought the land from parties who had acquired it pursuant to the original grant which was issued in the principal Magistrate’s court. The judge found that they were not made aware of the confirmation of the said grant or the hearing of the protest. In essence it was held that they had interest in the estate and should have been given an opportunity to be heard. The protestors



have filed their protests. This court has to determine the right of the protestors who are purchasers from persons who had acquired the parcels of land under the initial grant.

26. In confirmation applications, there are two principal factors for the court to consider. Appointment of administrators and distribution of the estate. For avoidance of doubt, Section 71 of the *Law of succession Act*, Cap 160, Laws of Kenya provides as follows in this regard.

“71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred may-
 - (a) If it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
 - (b) If it is not so satisfied, issue to some other person or persons, in accordance with the provisions of Section 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate or so much thereof as may be administered; or
 - (c) Order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
 - (d) Postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case: Provided that in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficiary entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

27. The appointment of the 1st and 2nd administrators in this case is not in issue. It follows then that the only duty left for this court is to undertake is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified.

28. From the documentary evidence on record, including copies of green cards and the several documentation from the County Council of Meru, it is clear that the following properties formed part of the deceased's estate;

- i) L.R Igoji/Kiangua/367
- ii) L.R Igoji/Kiangua/980
- iii) L.R Igoji/Kiangua/976
- iv) L.R Plot No. 19 Kiangua market.



29. In undertaking its duty to distribute the above assets, the rightful beneficiaries of the subject estate must be identified. As per the introductory letter on record from the area chief of Karia Location that is dated 26th March, 2009, the deceased was survived by the following dependants;
- i) Mutua Mwereria – son
 - ii) Julius Muriuki – son
 - iii) Lydia Kajuju Henry (wife to the late Henry, deceased’s son)
 - iv) Alphaxard Ndege – son
 - v) Eliud Njeru Johana – son
 - vi) Micheni Johana – grandson
 - vi) Joyce Kainda – daughter.
30. The above is not a true reflection of all the beneficiaries of the deceased. The 1st administrator (P.w 1) conceded in his cross examination that the deceased had 12 children in total, 6 sons and 6 daughters. In his affidavit of protest to confirmation of grant sworn on 10th May 2017, the 1st protestor listed all the 12 (twelve) children of the deceased as follows:
- i. Erastus Gichobi – Deceased
 - ii. Mutua Mwereria – deceased
 - iii. Julius Muriuki
 - iv. Joyce Kainda
 - v. Beatrice Muthoni
 - vi. Henry Miriti – deceased
 - vii. Charity Karambu
 - viii. Asenath John
 - ix. Mary Mugure
 - x. Alphaxard Ndege
 - xi. Harriet Nkune
 - xii. Eliud Njeru
31. The paragraph above is the true reflection of all the rightful beneficiaries of the deceased. It is however purported that before the deceased died, he had called the clan elders and distributed his estate amongst his sons only.
32. The deceased died in 1997 which is long after the Law of succession Act had come into force on 1st July 1981. His estate, therefore falls for distribution under the provisions of the law of succession Act specifically under part V of the Act as he died intestate. It has not been disclosed whether the deceased



left any surviving spouse. As such the provisions of Section 38 of the Law of Succession Act come into effect in this case. The said section provides as follows-;

“38. Where intestate has left a surviving child or children but no spouse- where an intestate has left a surviving child 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.

The court is supposed to determine who the beneficiaries are and their shares. Section 29 of the Law of succession Act provides as follows-;

29. Meaning of dependant

“For the purposes of this Part, “dependant” means— (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death; (b) such of the deceased’s parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and(c) where the deceased was a woman,her husband if he was being maintained by her immediately prior to the date of her death”.

“The children of the deceased are dependants without proof of dependency. Grand children inherit through their parents but where the parents are deceased they inherit directly if their parents are deceased’

33. It is clear that under the Law of Succession Act, there is no distinction that is made between male and female children. The law is gender neutral. That would mean that the 6 (six) daughters of the deceased are equally entitled to a share of the deceased’s estate. However, none of them has made any claim on their father’s estate. It is presumed that they have waived their right to inherit. What then remains in the distribution of the deceased’s estate among his sons.

34. The 6 (six) sons of the deceased include;

- i. Mutua Mwereria (deceased) – father to the 1st protestor
- ii. Julius Muriuki – 4th protestor and father to the 2nd protestor
- iii. Alphaxard Ndege – the 1st administrator
- iv. Erastus Gichobi Johana (deceased) father to the 2nd administrator.
- v. Eliud Njeru – the 3rd protestor
- vi. Henry Miriti (deceased) – father to the interested party

35. The issue that then remains for determination by this court is the mode of distribution of the subject estate. The administrators have proposed the following mode of distribution”

I. L.r Igoji/kiangua/357 – 8.9 Acres

- A. Eliud Njeru – 3.5 acres
- b. Julius Muriuki – 1 acre
- c. Alphaxard Ndege – 40 points
- d. Lydia Kajuju – 1 acre



- e. Micheni Johana – 1 acre
 - f. Julius Nyerere – 1 acre
 - g. Fredrick Mutua – 1acre.
- II. L.r Igoji/kiangua/980 6 acres and was subdivided into L.R Igoji/kiangua/2608 And L.r Igoji/kiangua/2609
- a. L.R Igoji Kiangua/2608 – Julius Muriuki
 - b. LR. Igoji/kiangua/2609 – Lydia Kajuju
- III. L.R Igoji/kiangua/976 Subdivided into L.R Igoji/kiangua/2613 And Lr Igoji/kiangua/2614
- a. L.R Igoji/kiangua/2608 – Alphaxard Ndege
 - b. L.R Igoji/kiangua/2609 – Aphaxard Ndege
- IV. Plot No. 19 Kiangua Market (To be registered in equal common shares)
- a. Eliud Njeru
 - b. Julius Muriuki
 - c. Aphaxard Ndege
 - d. Lydia Kajuju
 - e. Micheni Johana
 - f. Julius Nyerere
 - g. Fredrick Mutua
36. On his part, the interested party has proposed that the deceased's estate should be shared among the beneficiaries as follows
- I. L.R Igoji/kiangua/976
- a. Aphaxard Ndege – whole
- II. L.R Igoji Kiangua/980 – 6 Acres
- a. Julius Muriuki – 3 acres
 - b. Henry Miriti – 3 acres
- III. Plot No. 19 Kiangua Market (developed) to share equally among;
- a. Julius Muriuki
 - b. Eliud Njeru
 - c. Aphaxard Ndege
 - d. Leonard Kimathi s/o Henry Miriti (deceased)
 - e. Julus Nyerere s/o Erastus Gchobi (deceased)
 - f. Micheni Johana s/o Asenath Kainda



- IV. L.R. Igoji/kiangua/938 – 10 acres
 - a. Mutua Mwereria (deceased) whole
- V. L.R Igoji/kiangua/940 – 3.5 Acres
 - a. Julius Nyerere s/o Erastus Gichobi (deceased)
- VI. L.R Igoji/kiangua/367 – 8.9 Acres
 - a. Julius Nyerere s/o Erastus Gichobi (deceased – 0.5 acres
 - b. Eliud Njeru – 4 acres
 - c. Leonard Kimathi s/o Henry Miriti (deceased) - 1 acre
 - d. Micheni Johana – 1.5 acres
 - e. Julius Muriuki – 1 acre
 - f. Harriet Nkuene – 0.9 acres

37. All the sons of the deceased are entitled to a share of the deceased’s estate. However, it is clear that the deceased did distribute his estate to his son during his life and some disposed of their beneficial shares. Case in point is the late Mutua Mwereria who got L.R Igoji/kiangua/367 which is where the 1st protestor lives. Another case in point is that of the late Erastus Gichobi, the father of the 1st administrator, who already benefited from the estate of the deceased by being registered as the owner of L.R Igoji/Kiangua/940. From these, the estate of the late Mutua Mwereria and the late Erastus Gichobi should have no claim over the estate of the deceased as they already benefited from the estate during the lifetime of the deceased.
38. In the case of Alphaxard Ndege, he also has already benefited from L.R Igoji/Kiangua/676 while Julius Muriuki and the estate of the late Henry Miriti benefited from L.R Igoji/Kiangua/980.
39. The claim by John Kinoti, the 2nd protestor, over plot No. 19 Kiangua Market cannot stand. The 4th protestor is the father to John Kinoti and he is still alive. The said John Kinoti is therefore not entitled to claim from the estate of his grandfather while his father is still alive. In any case the agreements which were relied on authorized him to repairs and the amount spent would be returned at an interest. His claim to this plot is limited to a refund of the money which he incurred on repairs. It does not entitle him to ownership of the plot. Based on the case *Musa Nyaribari Gekoner & 2 others Vs Peter Mityenda & another* (2015) eKLR. He is not creditor to the estate as the agreement which he relies on was not entered into between him and the deceased. The 2nd protestor entered the agreement with the initial administrator before the grant was confirmed and even before the succession cause was filed. It is therefore apparent that the 2nd protestor was intermeddling with the estate of the deceased. Section 45 of the *Law of Succession act* provides;

“45. No intermeddling with property of deceased person (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person. (2) Any person who contravenes the provisions of this section shall— (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and (b) be answerable to the rightful executor or administrator, to the



extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

Intermeddling with the estate occurs where a person takes possession, disposes or otherwise deals with the estate. The 2nd protestor could therefore not acquire any right as a creditor of the estate. He has clearly pleaded his claim under paragraph 5 of the affidavit to be a refund of the amount he spent on renovating the building and to be given priority if the plot is to be sold. He has no right to inherit the said plot.

40. Turning to the 5th – 8th protestors who claim to be purchasers for value, Section 93 of the [Law of Succession Act](#) protects a bona fide purchaser of any property from a person who has obtained a grant of representation, even if that grant is subsequently revoked or varied. The said section provides as follows;

“(1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act”.

41. In the Uganda Court of Appeal case of *Katende Vs Haridar & company Ltd* cited with approval in the Kenya High court case of [Lawrence Mukiri Vs Attorney General & 4 others](#) [2013] eKLR for a purchaser to successfully rely on the *bona fide* doctrine, he must prove the following-;

- a. He holds a certificate of title.
- b. He purchased the property in good faith
- c. He had no knowledge of the fraud,
- d. The vendor had apparent valid title
- e. He purchased without notice of any fraud
- f. He was not party to any fraud.

42. Under Section 26 (1) of the [Land Registration Act](#) 2012 it is provided that the title is *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, and such title can only be challenged on the ground of fraud, misrepresentation or if proved that the title had been acquired illegally, unprocedurally, or through corrupt scheme.

43. In this case the deceased estate was distributed in 2011 after the confirmation of the initial grant. The distribution is alleged to have been in accordance with the wishes of the deceased. The 5th – 8th protestors acquired their respective portions of land that they now claim from the deceased’s estate by way of purchase for value without notice, upon which they were registered as proprietors, took occupation, started developing, and have been in open occupation and uninterrupted use of the same to date. In my view, the 5th – 8th protestors acquired valid titles over their respective portions of land. Thus, by dint of the provisions of Section 93 of the [Law of Succession Act](#), I find that the 5th – 8th protestors are bona fide purchasers for value without notice and hence entitled to the portions which they had purchased. See the ruling of Justice Limo in this matter dated 19th December, 2018.

44. That said, it is trite that succession proceedings are for purposes of determining and appointing the legal administrators of the deceased person and for ascertaining of the deceased’s heirs and their respective



shares. In *Rubo Kipngetich Arap Cheruiyot Vs Peter Kiprop Rotich* C.A 12/2008 (2013) KLR, the Court of Appeal observed that:

“claims by third parties to deceased person’s properties, although sometimes lodged in the succession cause of such deceased person, are better litigated in separate suits...”

The protestors (5 – 8) hold valid titles and this court lacks the requisite jurisdiction to interfere with them.

45. The ruling of this court that was delivered on 19th December, 2019 was geared towards bringing the disputes between the parties herein to an end. It would thus be contrary to the interests of justice if this court failed to do so at this juncture considering the age of the matter. In the circumstances and upon consideration of the proposals and distribution of the estate that were made by the administrators, protestors, and the interested party herein, it is my view that though the initial grant was revoked the parties had agreed to a great extent with the mode of distribution which was based on how the deceased had intended to have the estate distributed. None of the beneficiaries was denied a share of the estate. The properties were as follows-;

L.R Igoji/kiangua- 976. The property was registered in the name of the deceased at the time of his death. It was not an estate of the deceased as a decree of the court had awarded it Alphaxand Ndege. Estate of deceased is defined as

“Mean the free property of a deceased person” On free property the Act defines it as follows-;

“In relation to a deceased person means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interests has not been terminated by his death.”

The land parcel No. Igoji/kiangua/976 which had been decreed to Alphaxard Ndege by an order of the court did not form free estate of the deceased. The said Alphaxard Ndege is entitled to this property exclusively.

Land Parcel No. Igoji/kiangua/980 measuring six acres

the parcel was in the name of deceased and formed his estate. The chief’s letter confirmed that it belonged to the deceased. The land parcel was distributed to Lydia Kajuju 3.0 acres and Julius Muriuki 3.0 acres. It was sub-divided and Lydia Kajuju got parcel No. Igoji/kiangua/2609 and Julius Muriuki parcel No. Igoji/Kiangua/2608.

Plot No. Igoji/kiangua/367 measuring 8.9 acres

This property was registered in the name of the deceased at the time of his death and therefore formed part of the estate of the deceased. It was initially distributed to Mutua Mwereria 3.50 acres. Eliud Njeru Johana 3.50 acres Micheni Johana 1.00 acres.

Plot No. 19 was registered on the name of the deceased at the time of his death and was therefore available for distribution.

The mode of distribution was consented to by some of the beneficiaries (sons). The parties have not consented to the distribution. The protestors maintained that the deceased had distributed his estate to the beneficiaries. In cross examination P.W 1 Alphaxard Ndege confirmed that they had given consent to their brother Mwereria to be the administrator. The administrator submit that save for the protestors who bought land from Eliud Njeru Micheni Johana from their share in land Parcel No. Igoji/Kiangua/367 the other protestors did not acquire good title. I find that all the protestors who claim to have bought parcels of land it is evident that they bought after it was transmitted to sellers (beneficiaries) under the initial grant. It follows that all the protestors have their interests protected as



they purchased the properties from the administrators and beneficiaries after the grant was confirmed. My view is that the mode of distribution of the estate in the initial grant was fair save for the instance where property which was not supposed to be distributed was distributed to persons who were not entitled to a share of the estate. In some properties I find that the initial grant was revoked by consent and therefore distribution cannot be based on the way it was initially distributed.

46. I find that though the parties have agreed on the distribution of some of the properties, it is my view that where there is no consensus. This court is called upon to distribute the estate as provided under the law and in a manner that is fair. This ensures that the matter is determined once and for all.
47. For the reasons I have stated I find that distribution of the estate should be with regard to the estate of the deceased which was free estate as defined above, at the time of his death. The distribution should therefore be as follows;-LR. Igoji/kiangua/976

Alphaxard Ndege – Whole
L.R. Igoji/kiangua/980

Julius Muriuki – L.R. Igoji/kiangua/2608

Lydia Kanjau –LR. Igoji/kiangua/2609
L.R. Igoji/kiangua/367

Eliud Njeru 3.05 acres

Mutua Mwereria 3.5 acres

Micheni Johana 1.0 acre

Plot No. 19 Kiangua Market Eliud Njeru

Julius Muriuki } in equal common shares

Lydia Kajuju

Micheni Johana

Fredrick Mutua

48. From the record the son of deceased by name Erastus Gichobi who is Julius Nyerere Erastus confirmed that he filed succession in the estate of his late father. I find that being a grandson of the deceased is not entitled to the estate of the deceased. The land parcel No. Igoji/kiangua/938 belonged to Mutua Mwereria who was registered way back in 1974 as evidenced by the green card. It did not form the estate of the deceased at the time of his death and was not available for distribution. It cannot be considered as property which was given to him in the deceased's lifetime.
49. Finally the titles of 5th- 8th protestors are valid and the court find no reason to interfere with them.
50. On costs, this being a family dispute, I make no orders as to costs. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED IN OPEN THIS 30TH DAY OF MAY 2023

In presence of



5th Protestor – present

Mr. Mugambi for protestors

Mr. Kaumbi for the administrators’

Interested party – present

2nd protestor – present

Hon. Lady Justice L. Gitari

High Court - Judge

