



**In re Estate of M’arimi M’mbui (Deceased) (Succession Cause
232 of 2010) [2023] KEHC 19098 (KLR) (26 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19098 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 232 OF 2010
EM MURIITHI, J
JUNE 26, 2023
IN THE MATTER OF THE ESTATE OF M’ARIMI M’MBUI (DECEASED)**

BETWEEN

MARY NTINYARI M’ARIMI 1ST APPLICANT

CHARLES KIOGORA 2ND APPLICANT

AND

TARSILA NKATHA MUTEA 1ST RESPONDENT

JOHN MWITI MATHEW 2ND RESPONDENT

RULING

1. By Summons under certificate of urgency dated 1/2/2021 under section 76 of the [Law of Succession Act](#), Rules 26, 44, 49 and 73 of the [Probate and Administration Rules](#), the applicants seek that:
 1. Spent
 2. This Honorable Court be pleased to annul/cancel the certificate of confirmation of a grant dated 14th June 2018 issued to Tarsila Nkatha Mutea and John Mwiti Mathew and a proper grant to be issued to the rightful administrators Mary Ntinyari M’arimi & Charles Kiogora as per the judgment of 18th May 2011.
 3. The honorable court be pleased to issue an order that the land registrar do dispense with the requirement of production of the title deed in regard to land parcel number Ntima/Ntakira/2416 to enable the administrators complete administration of the estate.
 4. The costs of this application be in the cause.
2. The application is premised on the grounds on the face of it and supporting affidavit of Charles Kiogora, the 2nd applicant sworn on even date. By the judgment of Lady Justice Mary Kasango delivered



on 18/5/2011, a grant was issued in the joint names of the applicants herein. Further, the judge granted the administrators leave to apply for confirmation of the said grant. The application for confirmation of the grant was filed but the court erroneously confirmed the grant to the respondents, who are strangers to the suit. The said inadvertent error has caused major delay in the administration of the estate of the deceased and it is only fair that the grant is cancelled and a fresh one issued to the applicants herein who are the rightful administrators of the estate. The respondents have never been appointed as administrators herein and they are impostors who pose a great danger to the estate. The grant issued to their deceased brother Mathew Mungiiria Arimi, who was the husband and father to the 1st and 2nd respondent respectively, was nullified by the court vide its judgment of 18/5/2011, and a fresh grant issued to them, because the said Mathew Mungiiria Arimi had brought in strangers to the estate and disinherited 2 of his sisters. The respondents want to perpetuate the illegalities by Mathew Mungiiria Arimi by shielding the strangers who were kicked out by the court. He avers that since the original title deed for Ntima/Ntakira/2416 cannot be traced, it is necessary for the requirement for its production to be dispensed with, so that the estate can be quickly administered once a new grant is issued.

3. The respondents opposed the application vide their replying affidavit and further replying affidavit sworn on 7/5/2021 and 2/8/2021. The court gave them a grant on 14/6/2018 and none of the parties objected. In their capacity as administrators, they obtained consent to subdivide the land on 5/11/2019, and the land has been surveyed and mutation registered. The only pending issue is for some of the beneficiaries to pay the survey fees in order to get their respective titles. The 2nd applicant is not a beneficiary under the grant and he has been misleading the 1st applicant not to pay for her title so as to delay the completion of the administration of the estate. They aver that they have implemented the grant and there is nothing to revoke unless the parties are willing to repeat the entire exercise. The applicants have always been reluctant to have the matter finalized and they pray for the application to be dismissed with costs.

Submissions

4. The applicants urged that since the certificate of confirmation of grant was issued to the wrong administrators, it ought to be cancelled, and cited *Re Estate of Kipkorir arap Chebogoio (Deceased)* (2021) eKLR. They faulted the respondents for instructing a surveyor without their involvement or their input in regard to the distribution and majority of the beneficiaries are not in agreement with the way the respondents are subdividing the land as it is intended to relocate/displace the beneficiaries from where they are currently occupying yet they have made substantial developments on the land and would like to remain where they are. They urged the court to revoke the certificate of confirmation of grant dated 12/6/2018 issued to the respondents and a proper grant to be issued to them as per the judgment of 18/5/2011.
5. The respondents urged that the estate was to be shared equally and upon the court's approval of the surveyor's report, the land was shared as per the grant. They urged that the grant has been implemented and only two beneficiaries have not taken their respective titles on account that they have not cleared the survey fees. They urged that there is nothing pending to administer on the estate and the applicants' intent is to change the names in the grant to reflect their names. They urged that the title deed for Ntima/Ntakira/2416 was surrendered and the land subdivided into 14 portions, and prayed for the application to be dismissed with costs.

Analysis and Determination

6. The issue for determination is whether the grant should be revoked.



7. 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.”
8. The applicants seek revocation of the certificate of confirmation of the grant dated 14/6/2018 to align with the judgment of the court of 18/5/2011. In the said judgment, the court (Mary Kasango J) issued orders that, “1. An order of inhibition is issued to be registered against parcel number Ntima/Ntakira/2416. 2. The grant issued herein to Mathew Mungiiria Arimi on 26th October 2010 is hereby revoked. 3. A grant shall be issued in the joint names of Mary Ntinyari M’Arimi and Charles Kiogora. Those administrators are granted leave to file for confirmation of grant notwithstanding that the 6 months period has not expired. 4. The cost of the Summons dated 22nd February 2011 shall be paid to Mary Ntinyari M’Arimi and Beatrice Kananu M’Arimi by Mathew Mungiiria Arimi.”
9. In its judgment of 14/6/2018, the court (F. Gikonyo J) directed that the estate property be shared equally among the children of the deceased, except the 1st applicant, who had received his share during the life time of the deceased.
10. However, when the certificate of confirmation of grant was issued, the respondents were inadvertently captured as the administrators of the estate of the deceased, instead of the applicants herein.
11. This court is of the view that the amendment of the names of the administrators in the certificate of confirmation of grant does not warrant revocation of the entire grant, considering that the estate herein has been administered substantially.

Orders

12. Accordingly, for the reasons set out above, the court allows the application dated 1/2/2021 as follows:
- 1. The amended certificate of confirmation of grant dated 14/6/2018 which was issued to Tarasila Nkatha Mutea and John Mwiti Mathew, the respondents herein, is further amended to replace the names of the respondents with Mary Ntinyari M’arimi and Charles Kiogora, the applicants herein.



2. The administration of the estate of the deceased shall proceed from where it has reached.
Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF JUNE, 2023.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

M/S Mutonga Advocate for the Respondent.

M/S Maore Advocate for the Applicant.

