



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Elizabeth Muchuka Mucheke (Deceased) (Succession Cause 111 of 2003) [2023] KEHC 21227 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21227 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 111 OF 2003**

**TW CHERERE, J**

**JULY 27, 2023**

**IN THE MATTER OF THE ESTATE OF ELIZABETH MUCHUKA MUCHEKE (DECEASED)**

**BETWEEN**

**EVELYN KINYA ..... 1<sup>ST</sup> APPLICANT**

**BETTY KATHURE JAFETH ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARY NGUTA MUCHEKE ..... 1<sup>ST</sup> PETITIONER**

**LYDIAH KARIMI GIKUNDA ..... 2<sup>ND</sup> PETITIONER**

**ANN MWARI ..... 3<sup>RD</sup> PETITIONER**

**RULING**

**Background**

1. At the time of filing this cause, Applicants who are daughters of the deceased stated that deceased was survived by themselves and three other siblings namely Japhet Nyamu M'Mucheke, Naomi Nkirote Nkonge and Bridget Kinanu.
2. Subsequently by application for confirmation dated 22<sup>nd</sup> October, 2010, Respondents made no provision for Japhet Nyamu M'Mucheke who was by then deceased. They proposed to distribute the estate of eth deceased comprised in LR. Kibirichia/Kibirichia/2925 to themselves and to three others Blessy Mwendwa, Dennis Muriungi and Seventh Day Adventist whose relationship with the deceased was not disclosed.
3. Applicants' have moved the court for revocation of the grant on the ground that their father Japhet Nyamu M'Mucheke (deceased) who is son of deceased was not provided for.
4. The summons though served on the Respondents on 17<sup>th</sup> May, 2023 were not opposed.



5. The grounds for revocation of a grant are provided under section 76 of the Law of Succession 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 has ordered or allowed; 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.”

6. Though Japhet Nyamu M’Mucheke was deceased at the time of confirmation of the grant, his estate was entitled to a share of deceased’s estate. By omitting the name of Japhet Nyamu M’Mucheke from the list of beneficiaries and including three others whose relationship with the deceased has not been explained, Respondents acted fraudulently.

7. From the foregoing, the orders that commend to me and which I hereby issue are as follows:

1. Certificate of Confirmation of Grant dated 14<sup>th</sup> May, 2014 is revoked
2. Transfer of LR. Kibirichia/Kibirichia/2925 to Mary Nguta Mucheke, Lydia Karimi Gikunda and Ann Mwari and any subsequent subdivisions that may have arisen therefrom are hereby revoked
3. LR. Kibirichia/Kibirichia/2925 shall be reverted to the name of Elizabeth Muchuka Mucheke (Deceased)
4. These orders be served on the Respondents
5. Mention on 26<sup>th</sup> October, 2023 to confirm compliance with these orders and for further orders and/or directions
6. Costs shall be paid by the Petitioner/ Respondent



**DATED AT MERU THIS 27<sup>TH</sup> DAY OF JULY 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistant - Morris Kinoti

For Applicants - Mr. Mwirigi for OMK Advocates LLP

For Respondents - N/A

