



**In re Estate of Igweta Turuchiu (Deceased) (Succession Cause
415 of 2014) [2023] KEHC 21229 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 415 OF 2014
TW CHERERE, J
JULY 27, 2023
IN THE MATTER OF THE ESTATE OF IGWETA TURUCHIU
(DECEASED)**

BETWEEN

CHARLES MUGAMBI PETITIONER

AND

MAGRET KARAMANA MANYARA 1ST OBJECTOR

JOYCE KAGURI GIKUNDI 2ND OBJECTOR

GLADYS KAMIRU 3RD OBJECTOR

ELIZABETH NKIROTE 4TH OBJECTOR

MARTHA KAIRUTHI 5TH OBJECTOR

HARRIET KARURU 6TH OBJECTOR

RULING

Background

1. Igweta Turuchiu (Deceased) died sometimes 1969. His estate comprised of LR. Nyaki/mulathankari/472.
2. Letters of Administration were issued on November 3, 2014 to Charles Mugambi (respondent) in his capacity as son of the deceased. Subsequently, by a Certificate of Confirmation of Grant dated September 23, 2015, the estate was distributed solely to the respondent.



3. By summons dated February 16, 2021, Objectors in their capacity as children of deceased pray that the Certificate of Confirmation of Grant dated September 23, 2015 in which the estate was distributed solely to the respondent be revoked for disinheriting them.
4. By his replying affidavit sworn on November 14, 2022, Respondent concedes that objectors are his sisters. He avers that deceased is neither his father nor the objector's father but was a friend of his late grandfather M'Gwathi Muniya and that he was given the land by the relatives of the deceased for taking care of deceased in his old age.

Analysis and determination

5. I have considered the application in the light of the affidavit evidence on record and the court record.
6. At the time of filing this cause, respondent filed a chief's letter dated August 25, 2014 in which it is indicated that he is son of the deceased. In all the documents filed in court, respondent pleaded that he was son of deceased. The Letters of Administrating too were issued to him in his capacity as son of the deceased.
7. It is to be remembered that no party may in any pleading make an allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his in the same suit. This procedural imperative was discussed by the Court of Appeal in *Independent Electoral and Boundaries Commission & another vs. Stephen Mutinda Mule & 3 others* [2014] eKLR, in which the decision of the Supreme Court of Nigeria in *Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC* 91/2002 was quoted with approval thus:

“.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....

...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

8. Flowing from the above, I find that Respondent who has all along pleaded the fact that deceased is his father cannot be allowed to depart from that pleading only for the reason that his sisters have laid a claim to deceased's estate. The pleading that deceased was only a friend to their grandfather which is at variance with the averments of the pleadings goes to no issue and is hereby disregarded.
9. The Court in *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR reiterated circumstances that may lead to revocation of a grant as follows:

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”



10. In *Musa Nyaribari Gekone & 2 others v Peter Miyiinda & another* [2015] eKLR, the court of Appeal held that:

“The expression “any interested party” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate.”
11. The expression “any interested party” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate such as the applicants herein. The applicants who are daughters of the deceased are beneficially entitled to the estate of deceased and on that basis, have locus standi to present the application for revocation of the grant as they have.
12. Petitioner has conceded that he did not notify his sisters that he had filed this succession cause and that he caused the estate to be distributed wholly to himself and this leads to the conclusion that the grant was obtained by the making of a false statement and by concealment from the court of material particulars concerning the existence of the Objectors.
13. Section 38 of the *Law of Succession Act* the Act provides that:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of section 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”
14. In the case of *Stephen Gitonga M’Murithi v Faith Ngira Murithi* [2015] eKLR, the Court of Appeal noted that Section 38 of the Act enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried. Also see *Rono v Rono & another* [2008] 1 KLR).
15. Respondent argues that the objectors are long married. Today, it will be pretentious for any person to say or act ignorantly of the fact that discrimination of any person on the basis of gender or status is prohibited under *the Constitution* of Kenya, 2010, because; other than the existence of abundantly clear provisions of *the Constitution*, the chain of judicial decisions on discrimination on the basis of gender or status are equally clear. (See *Rono v Rono & Another*, 2008 1 KLR (G & F) page 803; *Douglas Njuguna Muigai v John Bosco Maina Kariuki & another* [2014] eKLR; *Mwongera Mugambi Rinturi & another v Josphine Kaarika & 2 others* [2015] eKLR; *Stephen Gitonga M’murithi v Faith Ngira Murithi* [2015] eKLR and *Joyce Kabiti M’ Turuchu v David M’ Ntiritu Kiambi* [2016] eKLR).
16. Consequently, I find that the Objectors have laid before the court sufficient material to support the application for revocation.
17. From the foregoing, the orders that commend to me and which I hereby issue are as follows:
 1. Magret Karamana Manyara, Joyce Kaguri Gikundi, Gladys Kamiru, Elizabeth Nkirote, Martha Kairuthi and Harriet Karuru are beneficiaries of deceased’s estate
 2. Letters of administration issued to the respondent on November 3, 2014 are hereby revoked and Charles Mugambi and Magret Karamana Manyara are appointed joint administrators with an order that Letter of Administration issue to them forthwith



3. The Certificate of Confirmation of Grant dated September 23, 2015 in which the estate was distributed solely to the Respondent is revoked and it is directed that LR. Nyaki/mulathankari/472 be reverted to the name of Igweta Turuchiu (Deceased)
4. The administrators shall within 45 days of this order apply for confirmation of grant after identifying the respective shares of each beneficiary
5. The status quo that obtained prior to the purported distribution conducted by the Petitioner/ Respondent shall remain pending the distribution of the estate
6. This cause shall be mentioned on October 26, 2023 to confirm compliance with these orders and for further orders and/or directions
7. Costs shall be paid by the petitioner/ respondent

DATED AT MERU THIS 27TH DAY OF JULY 2023

WAMAE. T. W. CHERERE

JUDGE

APPEARANCES

COURT ASSISTANT - MORRIS KINOTI

FOR OBJECTORS - MR. KIOGORA FOR KIOGORA MUGAMBI & CO. ADVOCATES

RESPONDENT - MR. MUTHOMI FOR JOHN MUTHOMI & CO. ADVOCATES

