



**In re Estate of Mutea Nguchine (Deceased) (Succession Cause
190 of 2000) [2023] KEHC 21228 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 190 OF 2000
TW CHERERE, J
JULY 27, 2023**

IN THE MATTER OF THE ESTATE OF MUTEA NGUCHINE (DECEASED)

BETWEEN

JAMES KIAMBI MUTEA APPLICANT

AND

M'MARETE M'MBOROKI PETITIONER

RULING

Background

1. James Kiambi M'Mutia (Applicant) and M'Marete M'Mboroki (Respondent) are sons of M'Mboroki Nguchine a brother to Mutea Nguchine (Deceased) who died sometimes on December 24, 1983. The parties' siblings include M'Nthambura M'Mboroki (deceased), Beatrice Nyoroka (deceased), Evangeline Muthoni (deceased), Kiriinya M'Mboroki (deceased), M'Marete M'Mboroki, Kaaria M'Mboroki (deceased) and Kanyuuru M'Mboroki.
2. The parties agree that Deceased did not have children of his own and that he took care of the parties herein and their siblings after their father disappeared during the state of emergency around 1950. The parties also agree that deceased's estate comprised of LR Nyaki/Nkabune/370 and LR Ntima/Ntakira/1320.
3. The record demonstrates that Letters of Administration were issued on July 9, 2001 to M'Marete M'Mboroki (Respondent). Subsequently, the estate was distributed in terms of the Certificate of Confirmation of Grant dated July 12, 2001 to the Respondent and two other persons namely Samuel Gikundi and Tarasisio Thurania Marete.
4. An issue has arisen as to whether the Applicant is entitled to LR Nyaki/nkabune/370.



5. Where intestate has left no surviving spouse or children as in this case, Section 39 of *Law of Succession Act* which provides:
- (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority
 - a. father; or if dead
 - b. mother; or if dead
 - c. brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - d. half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - e. the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
 - (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.
6. From the foregoing provision, the Applicant and the Respondent who are nephews of the deceased are beneficiaries to the estate since the deceased's parents, sisters and brothers too having died.
7. It should be remembered that no beneficiary has a better right to a deceased's estate than the other. This court has a duty to ensure that the estate of the deceased in this matter is distributed justifiably and no one beneficiary benefits at the expense of the beneficiaries.
8. A green card presented as evidence demonstrates that Applicant filed Succession Cause No 460 of 2010 and caused deceased's land parcel LR Ntima/Ntakira/1320 to be distributed to him to the exclusion of his siblings. Consequently, I find that Applicant's attempt to have the residual of the estate also distributed to him to the exclusion of his siblings including the Respondent, is in my considered view actuated by greed and the court cannot countenance such an injustice.
9. Whereas there is evidence that the parties herein have other siblings who though by law are entitled to deceased's estate have not pleaded their case, trials in Kenya are adversarial in nature where courts decide only those matters that have been properly laid out in evidence.
10. From the foregoing, I have come to the conclusion that Applicant has not made out a good case that would entitle him to a share of or the whole of Nyaki/Nkabune/370.
11. In the end, the summons for revocation dated May 31, 2022 and filed on June 2, 2022 is devoid of merit and it is dismissed with costs to the applicant.

DATED AT MERU THIS 27TH DAY OF JULY, 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Ms Musyimi for Ojwang Sombe & Co. Advocates

Respondent - Ms Kimotho for Gichunge Muthuri & Co. Advocates

