



REPUBLIC OF KENYA



In re Estate o M'Rutere M'Itimitu alias Rutere M'Itimitu (Deceased) (Succession Cause 31 of 1991) [2023] KEHC 24491 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24491 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 31 OF 1991
TW CHERERE, J
OCTOBER 26, 2023**

BETWEEN

EVALINE MWARI KABERE APPLICANT

AND

JOSPHAT MUTHURI 1ST RESPONDENT

GREGORY KITHINJI 2ND RESPONDENT

RULING

Background

1. M'Rutere M'Itimitu alias Rutere M'Itimitu (Deceased) died sometimes on 12th July, 1988. At the time of filing this cause, deceased's estate was stated to comprise of LR. Abothuguchi/Kithirune/967 and LR. Abothuguchi/Githongo/771.
2. Deceased's son David Kabere Rutere (who is since deceased) petitioned for letters of administration which were issued on 14th February, 2011 and indicated that deceased was survived by the following persons:
 1. Pricilla Karuku Rutere Widow
 2. Lydia Karimi Daughter
 3. Elizabeth Muthoni Daughter
 4. David Kabere Rutere Son
3. Subsequently by a Certificate of Confirmation of Grant 13th March, 1992, the estate was distributed solely to David Kabere Rutere and he caused the LR. Abothuguchi/Kithirune/967 to be subdivided into 22 portions (LR. Abothuguchi/Githongo/2011 to 2028; 2276, 2277, 2278 and 1840) all of which together with LR. Abothuguchi/Githongo/771 were registered in his sole name. Subsequently, it was



discovered that deceased also owned ½ of LR. Abothuguchi/Gaitu/971 which was not included in the Certificate of Confirmation of Grant 13th March, 1992. Subsequently, David Kabere Rutere died.

4. The court record reveals that subsequent to the death of David Kabere Rutere and the Respondents who are grandson and son of deceased by summons dated 21st June, 2019 applied for confirmation of the grant and deceased's estate was distributed *vide* the Certificate of Confirmation of Grant dated 14th November, 2019 as follows:
 - a. LR. Abothuguchi/Kithirune/967 to
 - i. Gregory Kithinji 4 acres
 - ii. Gerald Muthomi 4 acres
 - iii. Josphat Muthuri 2 acres
 - iv. Silas Murungi and Rose Kanana 1 acre jointly
 - b. LR. Abothuguchi/Githongo/771 to Josphat Muthuri
 - c. LR. Abothuguchi/Githongo/971 to Joseph Kinyua Karinga

Summons for revocation

5. By summons dated 02nd June, 2021, Applicant who is daughter to the Petitioner David Kabere Rutere (who is since deceased) applied to be appointed administrator of the estate and for revocation of the grant dated 14th November, 2019. The application is supported by her affidavit sworn on 24th January, 2020 and by her oral evidence in which she stated:
 - a. That deceased was survived by the following dependents:

First house

 - i. Alice Gachoro widow
 - ii. Gregory Kithinji son
 - iii. Evangeline Tirindi Daughter
 - iv. Castan Muthee Son
 - v. Mukiri Rutere Daughter
 - vi. Gerald Muthomi Son

2nd house

 - i. Priscilla Rutere Widow
 - ii. David Kabere Rutere Son
 - b. That deceased's estate comprises of
 - i. LR. Abothuguchi/Kithirune/967
 - ii. LR. Abothuguchi/Githongo/771
 - iii. LR. Abothuguchi/Githongo/971
 - iv. LR. Abothuguchi/Kithirune/1256



- v. Land at Nanyuki 4 acres
 - vi. Land at Nturukuma 2 acres
 - vii. Plot at Nturukuma
- c. That the Respondents have not provided for her father's eight dependents
 - d. That out of the 5 dependents of deceased's son Castan Muthee, only Gerald Muthomi was provided for
 - e. That Respondents were not appointed as administrators of the estate
 - f. That Respondents distributed LR. Abothuguchi/Githongo/971 to an alleged purchaser one Joseph Kinyua Karinga
 - g. That Respondents acted secretly and fraudulently as a result of which most beneficiaries have been disinherited
 - h. That many beneficiaries of deceased's estate who have lived on his estate are at the verge of being evicted and have gone ahead and damaged crops on the portions of land they occupy
 - i. That land parcels Timau/Timau Block 3/185 (registered in the name of her brother Nathan Mutwiri) and Timau/Timau Block 3/5 (registered in her brothers David Mwenda Kabeere, Zakayo Gikunda Kabeere and Samuel Gitonga Kabeere) was not gifted to her father by the deceased
6. By his replying affidavit sworn on 02nd July, 2021, Gregory Kithinji (2nd Respondent) that he is one of the administrators of the estates and that the estate was distributed with the consent of all beneficiaries as shown on consent dated 21st June, 2019. He additionally avers that Applicant's father David Kabere Rutere (who is since deceased) had no claim over deceased's estate since he had been given by the deceased land parcels Timau/Timau Block 3/185 (registered in the name of Applicant's brother Nathan Mutwiri) and Timau/Timau Block 3/5 (registered in Applicant's brothers David Mwenda Kabeere, Zakayo Gikunda Kabeere and Samuel Gitonga Kabeere) whereas Castan Muthee had been gifted LR. Abothuguchi/Kithirune/1256 now registered in the name of Muchemi s/o Rutere.
 7. By his evidence, 2nd Respondent disclosed that other deceased's children who were deceased included Marion Kanyua, Judith Mukiri, David Kabere and Castan Muthee who were not provided for when the estate was distributed. 2nd Respondent confirmed that the dependents of David Kabere Rutere (who is since deceased) are in occupation of deceased's asset but refers to them as trespassers. In conclusion, he confirmed that the dependents of David Kabere Rutere were not informed about the distribution of the estate. The witness additionally confirmed he had filed application dated 31st August, 2010 to evict the widow of David Kabere who was deceased from LR. Abothuguchi/Kithirune/967 and had without informing her children obtained orders for their eviction and attempted to evict them as a result of which some of their crops were damaged.
 8. Elizabeth Nchece supported the Respondents' case but failed to explain to the satisfaction of the court why some of the deceased's children were not provided for.

Analysis and determination

9. I have considered the application for revocation in the light of the affidavits and annexures thereto, the oral evidence and submissions of the parties and I have deduced the following issues for determination:



1. What comprises deceased's assets
2. Whether the Respondents are lawful administrators of deceased's estate
3. Who are deceased's beneficiaries
4. Whether Certificate of Confirmation of Grant dated 14th November, 2019 ought to be revoked

1. What comprises deceased's assets

10. Certificates of search filed at the time of filing this cause in 1991 disclose that deceased's estate comprised of LR. Abothuguchi/Kithirune/967 and LR. Abothuguchi/Githongo/771.
11. The parties agree that LR. Abothuguchi/Githongo/971 also belonged to the deceased but search certificate in respect thereof was not produced in evidence.
12. Concerning land parcels Timau/Timau Block 3/185 (registered in the name of Applicant's brother Nathan Mutwiri) and Timau/Timau Block 3/5 (registered in Applicant's brothers David Mwenda Kabeere, Zakayo Gikunda Kabeere and Samuel Gitonga Kabeere) and LR. Abothuguchi/Kithirune/1256 now registered in the name of Muchemi s/o Rutere, no evidence was tendered to demonstrate that the parcels belonged to the deceased and that they had been gifted to David Kabere Rutere and Castan Muthee respectively.
13. There is similarly no evidence that deceased owned other assets described by the Applicant as 4-acre Land at Nanyuki, 2-acre Land at Nturukuma and a Plot at Nturukuma.
14. From the foregoing, this court after considering all the material presented by the parties makes a finding that deceased's free estate comprised of LR. Abothuguchi/Kithirune/967 and LR. Abothuguchi/Githongo/771 as LR. Abothuguchi/Githongo/971 is yet to be confirmed by a search certificate.

2. Whether the Respondents are lawful administrators of deceased's estate

15. Section 3(1) of the *Law of Succession Act* Cap 160 Laws of Kenya defines an "administrator" to mean a person to whom a grant of letters of administration has been made under this Act.
16. The court record reveals that subsequent to the death of the Petitioner David Kabere Rutere, and without being substituted as administrators in place of the deceased Petitioner, the Respondents who are grandson and son of deceased respectively, by summons dated 21st June, 2019 applied for confirmation of the grant and deceased's estate was by a Certificate of Confirmation of Grant dated 14th November, 2019 was issued to them jointly distributed as follows:
 - a. LR. Abothuguchi/Kithirune/967 to
 - i. Gregory Kithinji 4 acres
 - ii. Gerald Muthomi 4 acres
 - iii. Josphat Muthuri 2 acres
 - iv. Silas Murungi and Rose Kanana 1 acre jointly
 - b. LR. Abothuguchi/Githongo/771 to Josphat Muthuri
 - c. LR. Abothuguchi/Githongo/971 to Joseph Kinyua Karinga



17. Without having been appointed as administrators by way of Letters of Administration, Respondent lacked locus to deal with deceased's estate and all their consequent actions were executed in their capacity as intermeddlers and are hereby declared a nullity.

3. Who are deceased's beneficiaries

18. The evidence on record discloses that as at the time of the purported distribution of deceased's estate, Respondents concealed material particulars and in particular failed to disclose the names of deceased's other children Marion Kanyua, Mukiri Rutere, David Kabere and Castan Muthee who are deceased or even provide for their dependents.

Whether Certificate of Confirmation of Grant dated 14th November, 2019 ought to be revoked

19. The grounds for revocation of a grant are provided under section 76 of the Act 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.”

20. By her evidence, Applicant has demonstrated to the satisfaction of the court that Respondents did not provide for her deceased father's eight dependents and that out of the 5 dependents of deceased's son Castan Muthee, only Gerald Muthomi was provided for. Applicant has also demonstrated that Respondents were not appointed as administrators of the estate and also that the alleged sale by deceased of LR. Abothuguchi/Githongo/971 to Joseph Kinyua Karinga had not proved.
21. Applicant has likewise proved that Respondents acted secretly and fraudulently as a result of which most beneficiaries have been disinherited and such beneficiaries are at the verge of being evicted and have had their crops on the portions of land they occupy destroyed.



22. On the other hand, Respondents failed to demonstrate that land parcels Timau/Timau Block 3/185 (registered in the name of her brother Nathan Mutwiri) and Timau/Timau Block 3/5 (registered in her brothers David Mwenda Kabeere, Zakayo Gikunda Kabeere and Samuel Gitonga Kabeere) were gifted by deceased to his now deceased sons David Kabere and Castan Muthee.
23. From the foregoing, there is no doubt that the Certificate of Confirmation of Grant dated 14th November, 2019 did not provide for all the beneficiaries of the deceased and was obtained fraudulently.
24. Consequently, the orders that commend to me and which I hereby issue are as follows:
 1. Pending a consent by the family as to who should administer deceased's estate, Evaline Mwari Kabere is appointed as the administrator of the estate
 2. Letters of administration shall forthwith issue to Evaline Mwari Kabere
 3. Certificate of Confirmation of Grant dated 14th November, 2019 issued to Josphat Muthuri and Gregory Kithinji is hereby revoked
 4. All subsequent orders arising out of the Certificate of Confirmation of Grant dated 14th November, 2019 issued to Josphat Muthuri and Gregory Kithinji are hereby set aside
 5. Evaline Mwari Kabere is directed to avail to the court green card for LR. Abothuguchi/Githongo/971 and search certificates of any sub-divisions arising therefrom
 6. An inhibition order is hereby issued restricting any dealings whatsoever with LR. Abothuguchi/Githongo/971
 7. Any sub-divisions arising out of LR. Abothuguchi/Kithirune/967 and LR. Abothuguchi/Githongo/771 are hereby cancelled
 8. The Land Registrar Meru is directed to revert LR. Abothuguchi/Kithirune/967 and LR. Abothuguchi/Githongo/771 to the name of M'Rutere M'Itimitu alias Rutere M'Itimitu
 9. Mention on 14th December, 2023 to confirm compliance with these orders and for further orders and/or directions
 10. Costs shall be paid by the Respondents

DATED AT MERU THIS 26TH DAY OF OCTOBER 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

For Applicant - Mr. Murango for Murango Mwenda & Co. Advocates For Respondents - Mr. Mwiti for Joshua Mwiti & Co. Advocates

