



REPUBLIC OF KENYA



**In re Estate of Barnabas M'irathuku (Deceased) (Succession Cause
181 of 1999) [2023] KEHC 26135 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 181 OF 1999
EM MURIITHI, J
NOVEMBER 30, 2023**

BETWEEN

MOSES MUTEGI KINOTI ADMINISTRATOR

AND

GERRALD GITONGA PETITIONER

AND

VERONICA NYEGERA INTERESTED PARTY

RULING

1. Before this court is the Summons Application dated April 26, 2022 seeking the following orders from this Court:-
 - i. That the honourable court be pleased to issue an order that land parcel No Nyaki/Kithoka/2xxx belongs to the estate of Gerrishon Gatobu Mbui – deceased.
 - ii. That upon granting prayer no. 1 hereinabove, the honourable court be pleased to order that land parcel no Nyaki/Kithoka/2xxx be transferred to Veronica Nyegera, the interested party in this cause who is the administrator of the estate of Gerrishon Gatobu Mbui – deceased.
 - iii. That the honourable court be pleased to order the administrator herein one Moses Mutegi Kinoti to transfer land parcel no. Nyaki/Kithoka/2xxx to Veronica Nyegera, the interested party in this cause who is the administratrix of the estate of Gerrishon Gatobu Mbui – deceased and in default, the honourable court do order that the Court Administrator of this honourable court be empowered to sign all the necessary documents to ensure that land parcel no. Nyaki/Kithoka/2xxx is transferred in the name of Veronica Nyegera as prayed in prayer no. 2 hereinabove.



- iv. That the honourable court be pleased to issue any order/orders it may deem just and fit to meet the ends of justice in this cause.
 - v. That the costs of this summons be provided for.
2. The application is supported by the affidavit and further supporting affidavit both sworn by Veronica Nyegera (the applicant) on April 26, 2022 and May 29, 2023 respectively. She deposed that she is the administrator of the estate of her late husband, Gerrishon Gatobu Mbui – deceased. That *vide* the orders of this Court dated April 4, 2022, it was determined that the only pending issue in this cause is the ownership of land parcel no. Nyaki/Kithoka/2xxx (hereinafter the “suit land”). She further deposed that there is overwhelming evidence and court orders in this cause that point to the fact that it is Gerrishon Gatobu Mbui – deceased who is entitled to the suit land. The applicant denied that her late husband was unlawfully and/or illegally included as a beneficiary of the deceased’s estate *vide* the Certificate of Confirmation of Grant dated August 1, 2002. She thus prayed for the present application to be allowed as prayed.
 3. In response to the application, there is on record an undated Replying Affidavit of Moses Mutegi Kinoti that was filed on April 11, 2023. The administrator/respondent deposed that the application for confirmation of grant dated 1st August, 2002 irregularly, unlawfully, and illegally included the husband of the applicant, the late Gerrishon Gatobu Mbui as a beneficiary of the estate of the deceased herein which comprised of LR Nyaki/Kithoka/984. The administrator avers that the applicant and his late husband are strangers to the estate and that there is no evidence to show that they were purchasers of the suit land. That the present application lacks any factual or legal foundation and thus deserves to be dismissed with costs.
 4. The application was canvassed by way of written submissions.

The Respondent’s Submissions

5. The respondent filed his written submission on September 1, 2023. It was his case that the estate of the deceased in this cause was to devolve to his two sons namely George Kinoti M’Irathuku and Gerald Gitonga M’Irathuku among other beneficiaries. That George Kinoti M’Irathuku, who is alleged to have entered into a sale agreement with the applicant’s late husband, Gerrishon Gatobu Mbui – deceased, passed on July 18, 2000 way before the grant was issued and confirmed. That the grant of representation in respect to the subject estate was issued to Gerald Gitonga M’Irathuku (now deceased) who went ahead and subdivided the estate which comprised of LR No Nyaki/Kithoka/984 into resultant parcels namely LR No.s Nyaki/Kithoka/2811-2818.
6. The respondent claims that the applicant’s claim on LR Nos Nyaki/Kithoka/2817 is not substantiated by any evidence as the late Gerald Gitonga M’Irathuku passed on before effecting the transfer and the respondent herein was consequently appointed as the administrator of the subject estate. It is the respondent’s submission that the alleged dealings by Gerrishon Gatobu Mbui – deceased amounted to intermeddling as the transaction was with an individual who did not hold a grant over the assets of the deceased herein. That the sale agreement between late Gerald Gitonga M’Irathuku and Gerrishon Gatobu Mbui – deceased cannot be legitimized in this cause and that the only remedy available to the estate of Gerrishon Gatobu Mbui with regard to the said transaction is to pursue the person who purported to sell the property to the late Gerrishon Gatobu Mbui.
7. The respondent stated that respondent and his step brother, Nicholas Kirimi, have filed a suit in the Environment and Land Court, the same being ELC Suit No. E007 of 2023 seeking a declaration that the applicant’s late husband’s claim for ¼ acre as a beneficiary or through the sale agreement with any



beneficiary before confirmation of grant of the subject estate was illegal, invalid, null and void for all purposes. Further, that they sought in the same suit a declaration that the inclusion of the applicant's late husband as a beneficiary in the subject estate was irregular, fraudulent and unlawful.

The Interested Party's/Applicant's Submissions

8. The applicant submitted that it is evident from the certificate of confirmed grant in this cause that Gerrishon Gatobu Mbui – deceased was given $\frac{1}{4}$ of LR Nyaki/Kithoka/9xx (the deceased's estate) which is currently the suit land. That Nicholas Kirimi and Moses Mutegi are out to abuse the court process by ensuring that the estate of Gerrishon Gatobu Mbui – deceased does not get the suit land. Further, that in view of the court order made on July 16, 2018, in respect of the Chamber Summons dated September 19, 2011, the suit land belongs to the estate of Gerrishon Gatobu Mbui – deceased.

Issues For Determination

9. I have considered the application dated April 26, 2022, the Affidavits in support and opposition thereof as well as the submissions by the parties. The main issues that arise for determination are:
 - i. Who is entitled to the suit land (Land Parcel No. Nyaki/Kithoka/2817)?
 - ii. Whether the Applicant is entitled to a grant of the orders sought in the application.

Analysis And Determination

10. This cause relates to the estate of Barnabas M'Irathuku who died intestate on February 15, 1998. From the record, grant of letters of representation were issued to one Gerald Gitonga on January 27, 2000 and the original Certificate of Confirmation of Grant was issued on August 1, 2002.
11. It is not in dispute that as per the said certificate of Confirmation of Grant dated August 1, 2002, the estate of the deceased, comprising of LR No Nyaki/Kithoka/9xx was distributed as follows:

Name	Description of Property Share
i.	Marion Kirugu M'Irathuku LR No Nyaki/Kithoka/984 2 acres
ii.	Sabella Nkoroi M'Irathuku " 2 acres
iii.	Gerald Gitonga M'Irathuku " 8 acres
iv.	Beatrice Nkirote Kinoti " 3 $\frac{3}{4}$ acres
v.	Annah Kaburo " 3 $\frac{1}{2}$ acres
vi.	Jediel Mwiti Kathure " 1 acre
vii.	David Gikunda Miriti " 1 acre
viii.	Gerrishon Gatobu Mbui " $\frac{1}{4}$ acre
12. It is also not in dispute that the applicant herein is the administratrix of the estate of his late husband Gerrishon Gatobu Mbui – deceased. The applicant avers that the suit land, measuring $\frac{1}{4}$ acre, was to be transferred by way of transmission to her late husband Gerrishon Gatobu Mbui as he was provided for in the confirmed grant as one of the beneficiaries.
13. Vide the Chamber summons dated September 19, 2011, the respondent sought the rectification of the certificate of grant issued by the court on August 1, 2002 praying *inter alia* that Gerrishon Gatobu Mbui (now deceased) be removed from the said Certificate of Confirmation of Grant. The said



Gerrishon Gatobu Mbui (now deceased) opposed the said application and by a court order issued on July 16, 2018, the Court dismissed the aforementioned Chamber Summons dated September 19, 2011

14. The deceased in this cause, Barnabas Kinoti M’Irathuku, had two sons namely: George Kinoti M’Irathuku and Gerald Gitonga M’Irathuku. The agreement of sale in respect of the suit land was between George Kinoti M’Irathuku (now deceased) and Gerrishon Gatobu Mbui (now deceased). George Kinoti M’Irathuku died on July 18, 2000 as per the Certificate of Death Serial No. 531xxx which is in the court’s record.
15. Vide the court orders issued on October 4, 2021, the court adopted the consent of the parties in respect to the application dated September 7, 2020 by appointing the respondent as the administrator of the subject estate in place of former administrator Gerald Gitonga (now deceased). Further, it further ordered that the power of the Respondent was limited to the need to complete the administration of the estate by the transfer of three assets of the estate to wit, LR No Nyaki/Kithoka/2xxx-2xxx as follows:

Name Description of Property Share

 - i. Gikunda Anampiu LR No Nyaki/Kithoka/28xx whole
 - ii. Veronica Nyegerea LR No Nyaki/Kithoka/28xx whole
 - iii. Moses Mutegi Kinoti LR No Nyaki/Kithoka/2xxx whole
16. In addition, the Court ordered that the rectified certificate of confirmation of grant be issued ad that the new administrator (the respondent herein) to effect the outstanding transfers within 60 days from that day.
17. The said three parcels of land which were subdivisions of LR No Nyaki/Kithoka/9xx, the original land parcel comprising the estate of the deceased herein. From the subsequent Certificate of Confirmation of Grant dated October 14, 2021, it is clear that the applicant herein was given the suit land. However, the parties by consent vacated the orders of October 4, 2021 on April 4, 2022. The parties also consented to uphold the appointment of the respondent as the administrator and the Court held that the only pending issue was who was entitled to the suit which issue the court directed to be addressed by an application hence the instant application.
18. The present application is brought under the provision of rules 49 and 73 of the Probate and Administrative Rules (the “Rules”). Rule 73 of the Rules provides that

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
19. The confirmed grant leading to the issuance of the Certificate of Confirmation of Grant dated August 1, 2002 has never been revoked or annulled. It is actually on the basis of the said grant that the deceased’s estate was distributed to the beneficiaries of the estate. In the circumstances, it is my view that as per the Certificate of Confirmation of Grant dated August 1, 2002, the late Gerrishon Gatobu Mbui was entitled to ¼ acre of the estate which is the suit land.
20. On the issue of irregularity or fraud as alleged by the Respondent against the Applicant by the institution of Meru ELC No E007 of 2023, it is my view that since fraud allegations are grounds for the revocation of a grant, then if such allegations are proved then the respondent would still have an avenue to seek redress by an application for the revocation of grant that culminated to the Certificate of Confirmation of Grant dated August 1, 2002. In the absence of the proof of the fraud allegations, it is



my view that the grant confirmed on 1st August, 2002 is still valid and should be enforced accordingly. For avoidance of doubt, this means that it is the estate of the late Gerrishon Gatobu Mbui that is entitled to the suit property, LR No Nyaki/Kithoka/2xxx.

21. As to whether the applicant is entitled to the orders sought, the court has already found that the estate of the Applicant's late husband is entitled to the suit land and the ends of justice dictate that the said estate of the late Gerrishon Gatobu Mbui should get its rightful share of the estate. The applicant has provided evidence to show that she is the administrator of the estate of her late husband, Gerrishon Gatobu Mbui, and in the circumstances, it is the respectful view of this court that the Applicant is entitled to the prayers she is seeking in the instant application.

Conclusion

22. Accordingly, for the reasons set out above, the Court finds that the application dated April 26, 2022 is merited and the same is allowed as prayed in prayers nos. 1, 2, and 3 of the application.
23. There shall be no order as to costs.

Order accordingly

DATED AND DELIVERED THIS 30TH DAY OF NOVEMBER 2023.

EDWARD M. MURIITHI

JUDGE

