



In re Estate of Ikwa Kariginyu alias M'ikwa Kariginyu (Deceased) (Succession Cause 183 of 2004) [2023] KEHC 26218 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 183 OF 2004
TW CHERERE, J
NOVEMBER 30, 2023
IN THE MATTER OF THE ESTATE OF IKWA KARIGINYU ALIAS
M'IKWA KARIGINYU (DECEASED)**

BETWEEN

TARCISIO RIUNGU IKWA APPLICANT

AND

JERINA KIURIA MWITI APPLICANT

RULING

Introduction

1. Ikwa Kariginyu alias M'ikwa Kariginyu (Deceased) died sometimes on March 14, 2002. Letters of Administration were issued to Tarcisio Riungu Ikwa (Petitioner/Respondent) on May 18, 2005. Subsequently, deceased's estate was distributed in terms of the Certificate of Confirmation of Grant dated February 13, 2017 and was subsequently rectified on March 7, 2017.
2. By summons dated July 6, 2023 filed on July 14, 2023 which is supported by applicant's affidavit sworn on July 6, 2023, Applicant avers that the Petitioner/Respondent caused deceased's estate in LR. Nkuene/Ngonyi/137 to be portioned into five portions namely LR. Nkuene/Ngonyi/1212 – 2016, sold off LR. Nkuene/Ngonyi/1213, 1214 and 1216 and apportioned LR. Nkuene/Ngonyi/1215 which is locked between LR. Nkuene/Ngonyi/1214 and 1216 and is therefore incapable of being distributed to seven beneficiaries of the late Joseph Mwititi M'ikwa.
3. By his replying affidavit sworn on October 4, 2023, petitioner/respondent confirms that both Benard Kimathi Mstienjawa and Sabastiano Mutembei purchased denies selling LR. Nkuene/Ngonyi/1214 and 1216 respectively and he subsequently sold LR. Nkuene/Ngonyi/1213 to one Samson Kiruguti John. He avers that LR. Nkuene/Ngonyi/1215 is available for distribution to the family of the late Joseph Mwititi M'ikwa which include the Applicant and denies that any boundary passes through the



Applicant's house. His averments are supported by Applicant's co-wife Juster Karimi Mungiria in her affidavit sworn on October 24, 2023

Analysis and determination

4. I have considered the application in the light of the affidavits and submissions filed on behalf of the parties.
5. Under Section 76 Law of Succession, a grant can be revocation either on the application of an interested party or on the court's own motion where there is 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. (See *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR and *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR.
6. From the affidavit evidence on record, the Applicant has not demonstrated existence of any of the grounds for revocation set out in the foregoing section.
7. Whereas the issue of topography of LR. Nkuene/Ngonyi/1215 which is the portion identified for the family of the late Joseph Mwiti M'Ikwa may be a triable issue, it is nonetheless not a ground for revocation of a grant.
8. In the end, the application dated July 6, 2023 filed on July 14, 2023 is considered and found to have no merit and it is disallowed.
9. The family of the late Joseph Mwiti M'Ikwa is urged to cooperate with the Petitioner to ensure distribution of LR. Nkuene/Ngonyi/1215 to his family
10. Mention on February 29, 2024 to confirm distribution

DATED AT MERU THIS 30TH DAY OF NOVEMBER 2023

WAMAE. T. CHERERE

JUDGE

Appearances

For Applicant - Mr. Mokuu for Mokuu Obiria & Co. Advocates

For Petitioner/Respondent – Ms. Athieno for J.K.Ntarangwi & Co. Advocates

