



REPUBLIC OF KENYA



**In re Estate of M’rimberia M’ibutania (Deceased) (Succession Cause 38 of 2014) [2023] KEHC 25791 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25791 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 38 OF 2014**

**EM MURIITHI, J  
NOVEMBER 28, 2023**

**IN THE MATTER OF THE ESTATE OF M’RIMBERIA M’IBUTANIA (DECEASED)**

**BETWEEN**

**JACKSON KIRIINYA M’RIMBERIA ..... PETITIONER**

**AND**

**PETER GITONGA ..... OBJECTOR**

**RULING**

1. This succession cause relates to the estate of the late M’Rimberia M’Ibutana (deceased) who died intestate on 5<sup>th</sup> February, 1985. Jackson Kiriinya M’Rimberia, the Petitioner herein, is a son of the deceased and he took out letters of administration intestate to the estate of the deceased. The grant was issued to the Petitioner on 24<sup>th</sup> April, 2014 and confirmed on 2<sup>nd</sup> December, 2014.
2. In his affidavit in support of his summons application for confirmation of grant, the Petitioner indicated at paragraph 2 therein that the deceased was survived by the following children:
  - i. Jackson Kiriinya M’Rimberia - Son
  - ii. Laban Mubichi M’Rimberia - Son
  - iii. Silas Mugambi M’Rimberia - Son
  - iv. Julia Karimburi M’Arimi - Daughter
  - v. Grace Karimi M’Ikunyua - Daughter
  - vi. Salome Mwari Kinoti - Daughter
  - vii. Hellen Kathambi Marete - Daughter-in-law
  - viii. Janet Kagwiria Kinoti - Daughter-in-law



- ix. Charity Gacheri Kithinji - Daughter-in-law
  - x. Jotham Mwenda Kabiti - Grandson
  - xi. Peterson Mwiti Kabiti - Grandson
  - xii. Joshua Murithi Kiiti - Grandson
  - xiii. Joyce Mwari Murebi - Daughter
3. From the same aforesaid affidavit, the Petitioner proposed that the estate of the deceased be confirmed in the following terms:
- Name Description of Property Share
- i. Silas Mugambi M'Rimberia Kiirua/Kiirua/421 1.5 Acres
  - ii. Hellen Kathambi Marete " 1.5 Acres
  - iii. John Kinyua Mworira " 1.25 Acres
  - iv. Kimathi Kabilu " 1.0 Acres
  - v. Martin Murithi " 0.50 Acres
  - vi. Stanley Mwenda " 0.50 Acres
  - vii. Robert Kinyua Kiirua/Kiirua/421 0.5 Acres
  - viii. Peterson Mwiti Kibiti " Jointly
  - ix. Andrew Mutua M'Mukira " 0.5 Acres
  - x. Maureen Kathambi Kiirua/Kiirua/421 0.625 Acres
  - xi. Mercy Kagwiria Kinoti " Jointly
  - xii. Janet Kagwiria Kinoti " 0.625 Acres
  - xiii. Irene Gakii " 0.50 Acres
  - xiv. Julia Karamburi M'Arimi Kiirua/Kiirua/421 0.50 Acres
  - xv. Grace Kagwiria " Jointly
  - xvi. Raban Mubichi " 0.71 Acres
4. The grant issued to the Petitioner was consequently confirmed on 2<sup>nd</sup> December, 2014 as proposed by the Petitioner.
5. Peter Gitonga, the Objector herein, filed an affidavit on 28<sup>th</sup> January, 2015 claiming that the deceased was his father. Further, that the deceased had two wives and that the Petitioner and his brother were from a different household from the Objector's household. He claimed that the Petitioner and his brother reside in a parcel of land at Mpuri and that the land parcel that was subject to these succession proceedings is in Kiirua. In addition, it was the Objector's claim that the Petitioner had completely excluded him from the list of the surviving dependants of the deceased.
6. In support of the objection by the Objector, Janet Kagwiria, Joyce Mwari, Joanina Karwirwa and Jotham Mwenda swore a joint affidavit in which they deposed that they were the daughter and widows



of the deceased's sons. That the deceased had two wives namely: Maritha Kanyua (deceased) and Julia Kaburu (deceased). Further, that the deceased had the following children from the two households:

- i. 1<sup>st</sup> Wife – Martha Kanyua
  - i. Jackson Kiirinya M'Rimberia – Petitioner
  - ii. Grace Karimi
  - iii. Silas Mugambi M'rimberia
  - iv. Julia Mugambi
  - v. Raban Mubichi – deceased but survived by his wife Joanina Karwirwa
  - vi. Salome Mwari
  - vii. Charity Gacheri
- ii. 2<sup>nd</sup> Wife – Julia Kaburo
  - i. Gerald Kibiti – survived by the following children
    - a. Jotham Mwenda
    - b. Isaack Mworira – deceased but survived by a minor son called Rewel Mutuma and Jotham Mwenda is his legal representative
    - c. Peter Gitonga
    - d. Stanley Kithinji – deceased but survived by four children
    - e. Charles Kinoti – deceased but survived by his wife Janet Kagwiria and three children
    - f. Joyce Mwari

7. They alleged that the deceased had another land at Mpuri within Meru County where he buried his first wife, the mother to the Petitioner, and that the Petitioner was in possession of the land. That the deceased and his 2<sup>nd</sup> wife lived on land parcel no. Kiirua/Kiirua/421 (the “suit land”) till their demise. It was thus their claim that the Petitioner filed the instant succession cause secretly and excluded the second household of the deceased to their detriment. Further, that the Petitioner has allocated the suit land to purchasers without their knowledge or consent.

8. The Petitioner opposed the application for revocation of grant vide his Replying Affidavit sworn on 5<sup>th</sup> October, 2015 and his Further Replying Affidavit sworn on 10<sup>th</sup> November, 2015. He denied that the Objector was a son of the deceased. He however acknowledged that the deceased had a second wife called Juliah Kaburo. According to him, the late Juliah Kaburo only had two sons namely Gerald Kibiti M'Ringera and Peter Gitonga M'Ringera. The Petitioner also denied that the said Juliah Kaburo was buried on the suit land. He also denied that the deceased had land in Mpuri stating that the land in Mpuri belonged to the deceased's first wife who got it from her father. Further, he denied that the Applicant ever lived on the suit land.

9. The Petitioner further deposed that the names of Jackson Kiriinya M'Rimberia, Silas Mugambi M'Rimberia, Laban Mubichi M'Rimberia, Grace Karimi, Julia Karamburi, Salome Mwari, and Charity Gacheri are all not listed in the deceased's eulogy as being the step sisters and brother of the Petitioner, if indeed they were related. That Janet Kagwiria is one of the beneficiaries in the grant



and has received her share together with her children of her co-wife, Maureen Kathambi and Mercy Kagwiria Kinoti. That Joanina, who was the wife of Laban Mubichi, had run away from her husband in 2003 and only came back after the demise of her husband on 8<sup>th</sup> May, 2015 and that Laban Mubichi has a share of the estate of the deceased. Finally, with respect to Jotham Mwenda, the Petitioner deposed that he was the son of Gerald Kibiti M'Ringera who the Petitioner claims is not the Petitioner's brother implying that he was not a son of the deceased.

10. The Petitioner maintained that there was no secrecy in filing this succession matter. That the family of the deceased attended a meeting at the chief's office and none of them mentioned Gerald Kibiti M'Ringera and the Applicant as being children of the deceased. Further, that there is no stranger in the confirmed grant as the other people are purchasers who purchased portions of land from the beneficiaries. In addition, that the family members agreed that a portion of land be sold to cater for the expenses of the sub-division and that the portion sold was sold to Irene Gakii by Laban Mubichi (1/4 acre), to John Kinyua by the Petitioner, and that Andrew Mutua M'Mukira and Kimathi Kabilo bought from the family to raise money for the transfer and other expenses hence their inclusion in the grant.
11. I have carefully considered the application, the affidavits tendered by both parties in support and in rebuttal of issues herein as well as the as well as the submissions by the parties. The main issue that arises for determination by this Court is whether the grant issued to and confirmed to the petitioner herein should be revoked.

### **Analysis**

12. The law on revocation of a grant is provided for under Section 76 of the Act and Rule 44 of the Probate and Administration Rules. Section 76 of the Act provides as follows:
  - 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 court of something material to the case.
  - c. that the grant was obtained by means of an untrue allegation of the fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
  - d. ...
  - e. ...”
13. For the court to order revocation of grant, a party must prove that:
  - a. Proceedings to obtain the grant were defective in substance;
  - b. The grant was obtained fraudulently by the making of a false statement or concealment from court of something material to the case;
  - c. That the grant was obtained by means of untrue allegations.
14. By the instant application, the Objector herein is seeking the revocation of the grant issued to the petitioner pursuant to section 76 of the [Law of Succession Act](#), cap 160 Laws of Kenya among other



provisions. The grounds for revocation as depicted in the summons for revocation of grant are as follows:-

- i. The petitioner obtained the grant fraudulently by making false statement and by concealing from the honourable court the actual beneficiaries of the late M'Rimberia M'Ibutania.
  - ii. The grant was obtained by means of untrue allegations of fact and thus majority of the beneficiaries were left out during the distribution stage.
  - iii. The petitioner is in the process of sub-dividing the land to potential buyers without involving or giving the rest of the beneficiaries their rightful shares.
  - iv. The petitioner has allocated some of the beneficiaries' shares to his own sons in complete disregard of their constitutional right to property.
  - v. Unless the grant is revoked, the rest of the beneficiaries stand to suffer irreparable damage if the petitioner goes ahead to disinherit them and their permanent homestead shall be demolished.
15. It is not in dispute that the deceased had two wives. Therefore, the distribution of his estate should have proceeded under section 40 of the *Law of Succession Act* which provides as follows:
- “40(1) “where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”
16. This section clearly provides that all children of the deceased, whether male or female, are beneficiaries and should receive a share from the estate of the deceased unless any of them opts not to get a share in their father's estate.
17. In this case, the children from the 2<sup>nd</sup> household are thus entitled to a share of the estate of the deceased as much as the children from the deceased's 1<sup>st</sup> household. The evidence on record however shows that the petitioner distributed the subject estate to some individuals who he alleged to be bona fide purchasers of the estate. This includes John Mworira, Kimathi Kabiro, Stanley Mwenda, Robert Kinyua and Andrew Mutua. From this evidence, it is clear that the petitioner concealed from the court the true beneficiaries of the estate of the deceased and went on to distribute the same to individuals who purchased portions of the estate before the confirmation of the grant. The petitioner also went on to provide for his children namely Irene Gakii and Maureen Kathambi to the exclusion of the other legitimate beneficiaries of the estate. If indeed the deceased only left behind the suit land, then the question begs why not all the beneficiaries identified by the petitioner under paragraph 2 of his affidavit in support of confirmation of grant were included in his proposed mode of distribution of the estate including himself.

## **Conclusion**

18. From the foregoing, that the grant of letters of administration issued to the petitioner on 24<sup>th</sup> April, 2014 and confirmed on 2<sup>nd</sup> December, 2014 must be revoked for being defective as the same was obtained fraudulently and by concealment from court of material facts owing to the exclusion of some of the bona fide beneficiaries from the list of beneficiaries. The said grant is consequently revoked under the provisions of section 76 of the *Law of Succession Act*.



## **Orders**

19. Accordingly, for the reasons set out above, the Court finds that the Summons for Revocation/ Annulment of Grant dated 18<sup>th</sup> September, 2015 is allowed as prayed.
20. In the interest of expeditious conclusion of this cause, the administrator is directed to file a list of all the assets of the deceased and all the dependants of the deceased for confirmation of the Grant within six (6) months from today.
21. There shall be no order as to costs.

Order accordingly.

**DATED AND DELIVERED ON THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

