



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of M'Ibuathu M'Ilula (Deceased) (Succession Cause  
278 of 2000) [2023] KEHC 27045 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27045 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 278 OF 2000  
TW CHERERE, J  
DECEMBER 20, 2023  
IN THE MATTER OF THE ESTATE OF M'IBUATHU M'ILULA (DECEASED)**

**BETWEEN**

**JOEL MITHIKA M'IBUATHU ..... PETITIONER**

**AND**

**REGINA KARAMBU ..... 1<sup>ST</sup> RESPONDENT**

**MARTHA KATHURE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. By a ruling dated 31<sup>st</sup> October, 2007, Lenaola J (as he then was) determined the following issues. That:
  1. Deceased's estate comprises of:
    - a. Land parcel No. Njia/Buri-E-Ruri/976
    - b. Land parcel No. Njia/Buri-E-Ruri/2161
    - c. Land Parcel no. Njia/Buri-E-Ruri/2497
    - d. Plot No. 563, Akirangondu Land Adjudication.
    - e. Plot No. 17A Muringene Market
    - f. Ksh. 60,000/- with KCB bank
  2. That all of deceased's daughters had renounced their entitlement to the estate



2. Consequently, the Learned Judge directed that the estate be distributed to Joel Mithika M'Ibuathu (Applicant) with Margret Ciomaua M'Ibuathu, the deceased's widow, having a life interest in all the properties.
3. The record demonstrates that the certificate of confirmation of grant issued thereafter on 19<sup>th</sup> March, 2004 distributed the estate in equal shares to Joel Mithika M'Ibuathu and Margaret Ciomaua M'Ibuathu.
4. Subsequently, Margaret Ciomaua M'Ibuathu died. Regina Karambu, the 1<sup>st</sup> Respondent who is daughter of deceased by summons dated 18<sup>th</sup> November, 2021 applied that the share for Margaret Ciomaua M'Ibuathu be distributed to her. Martha Kathure the 2<sup>nd</sup> Respondent who is also daughter of deceased by summons dated 08<sup>th</sup> March, 2022 applied that ½ of the estate be distributed to Joel Mithika M'Ibuathu (Applicant) and the other ½ be distributed equally to Regina Karambu, Martha Kathure, Mercy Kinya, Dorcas Kawira and Douglas Mutwiri.
5. The court record demonstrates that on 09<sup>th</sup> March, 2022, in the absence of Applicant and his counsel, both counsel for the Respondents entered into a consent substituting Margaret Ciomaua M'Ibuathu with Regina Karambu and Martha Kathure. The court then directed that the parties agree on distribution of Margaret Ciomaua M'Ibuathu's share.
6. Subsequently, Letters of Administration were issued to Regina Karambu (1<sup>st</sup> Respondent) and Martha Kathure (2<sup>nd</sup> Respondent) on 18<sup>th</sup> March, 2022, thereby substituting the names of Margaret Ciomaua M'Ibuathu and Joel Mithika M'Ibuathu.
7. By summons dated 18<sup>th</sup> October, 2023, Joel Mithika M'Ibuathu (Applicant) seeks the following orders:
  1. Proceedings and ruling of 18<sup>th</sup> March, 2022 be set aside
  2. Grant of Representation issued to Regina Karambu and Martha Kathure on 18<sup>th</sup> March, 2022 be revoked
  3. The life interest for Margaret Ciomaua M'Ibuathu be distributed to Joel Mithika M'Ibuathu (Applicant)
8. The summons was opposed by an affidavit sworn on 08<sup>th</sup> November, 2023 by Regina Karambu (1<sup>st</sup> Respondent) who avers that the summons by Joel Mithika M'Ibuathu (Applicant) has the effect of disinheriting the family of Margaret Ciomaua M'Ibuathu. 2<sup>nd</sup> Respondent proposes that ½ of the estate be distributed to Joel Mithika M'Ibuathu (Applicant) and the other ½ be distributed equally to Regina Karambu and Martha Kathure.
9. I have considered the summons dated 18<sup>th</sup> October, 2023, the affidavits and annexures thereto and submissions filed on behalf of the Applicant and the 2<sup>nd</sup> Respondent and I have deduced the following undisputed facts.
  1. The Certificate of Confirmation of Grant issued on 19<sup>th</sup> March, 2004 distributed the estate jointly to Joel Mithika M'Ibuathu (Applicant) and Margret Ciomaua M'Ibuathu which was contrary to the court order dated 31<sup>st</sup> October, 2007 in which the estate was distributed to Joel Mithika M'Ibuathu (Applicant) with Margret Ciomaua M'Ibuathu, the deceased's widow having a life interest in all the properties.
  2. The summons by Regina Karambu (1<sup>st</sup> Respondent), dated 18<sup>th</sup> November, 2021 and the summons by Martha Kathure (2<sup>nd</sup> Respondent) dated 08<sup>th</sup> March, 2022 seeking to distribute



only ½ of the estate to Joel Mithika M’Ibuathu (Applicant) and the other ½ to themselves was made in the mistaken believe that the estate had been distributed in equal shares between Joel Mithika M’Ibuathu (Applicant) and Margaret Ciomaua M’Ibuathu

3. The consent order dated 09<sup>th</sup> March, 2022 was not only made without the knowledge of Joel Mithika M’Ibuathu (Applicant) and his counsel but was by virtue of Section 81 of the said Law of Succession Act unnecessary for upon the death of Margret Ciomaua M’Ibuathu, all the powers and duties of the administrators vested on the surviving administrator Joel Mithika M’Ibuathu (Applicant)
  4. The Letters of Administration issued to Regina Karambu (1<sup>st</sup> Respondent) and Martha Kathure (2<sup>nd</sup> Respondent) on 18<sup>th</sup> March, 2022, thereby replacing the names of Joel Mithika M’Ibuathu and Margret Ciomaua M’Ibuathu, without the consent and knowledge of Joel Mithika M’Ibuathu and without an express court order was made in error
  5. By a ruling dated 31<sup>st</sup> October, 2007, Lenaola J (as he then was) determined that all of deceased’s daughters who include the Respondents herein had renounced their entitlement to the estate
10. From the foregoing, I find that the Respondents are making an attempt to modify the ruling dated 31<sup>st</sup> October, 2007 by Lenaola J (as he then was) distributing the estate to Joel Mithika M’Ibuathu (Applicant) with Margret Ciomaua M’Ibuathu, the deceased’s widow having a life interest in all the properties.
  11. The life interest entitled Margaret Ciomaua M’Ibuathu to user of the property during lifetime, and upon her death, the life interest was determined and the estate passed to Joel Mithika M’Ibuathu (Applicant) absolutely.
  12. Respondents renounced their right as stated in the ruling dated 31<sup>st</sup> October, 2007. That court order on distribution was neither appealed nor reviewed and remains binding on the parties. This court therefore declines an invitation to permit the Respondents to improperly and impermissibly re-litigate endlessly on a determined issue, for litigation must come to an end.
  13. Consequently, the summons dated 18<sup>th</sup> October, 2023 is allowed in the following terms:
    1. Proceedings and consent order issued of 09<sup>th</sup> March, 2022 are hereby set aside in their entirety set aside
    2. Grant of Representation issued to Regina Karambu and Martha Kathure on 18<sup>th</sup> March, 2022 is hereby revoked
    3. Joel Mithika M’Ibuathu is by operation of Section 81 of the said Law of Succession Act appointed as sole administrator of the estate
    4. The life interest of Margaret Ciomaua M’Ibuathu having been determined by her death, Deceased’s estate comprised in Land parcel No. Njia/Buri-E-Ruri/976, Land parcel No. Njia/Buri-E-Ruri/2161, Land Parcel no. Njia/Buri-E-Ruri/2497, Plot No. 563, Akirangondu Land Adjudication., Plot No. 17A Muringene Market and Ksh. 60,000/- with KCB bank devolves wholly to Joel Mithika M’Ibuathu (Applicant).
    5. Certificate of confirmation of grant issued on 19<sup>th</sup> March, 2004 distributing the estate jointly to Joel Mithika M’Ibuathu and Margret Ciomaua M’Ibuathu shall be rectified in terms of order (4) above.
    6. Applicant’s costs shall be borne jointly and severally by the Respondents



**DATED AT MERU THIS 20<sup>TH</sup> DAY OF DECEMBER 2023.**

**WAMAE. T. CHERERE**

**JUDGE**

