



**In re Estate of Muronga M’kobia (Deceased) (Succession Cause
137 of 1990) [2023] KEHC 26688 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26688 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 137 OF 1990
TW CHERERE, J
DECEMBER 20, 2023**

BETWEEN

DAVID MUKIIRA MURONGA PROTESTOR

AND

PAUL MWITI M’TURUCHIU 1ST RESPONDENT

JOY KATHURE 2ND RESPONDENT

JUDITH NCENGE MURONGA 3RD RESPONDENT

MARTIN MWITI 4TH RESPONDENT

RULING

1. By a ruling dated 15th December, 2022, this court dismissed summons dated 30th November, 2021 by Joy Kathure and Judith Ncenge seeking revocation of the grant rectified on 08th April, 2019 and cancellation and consolidation of LR. Abothuguchi/Githongo/4880, 4881 and 4882 to the original number in deceased’s name. This decision was founded on the basis that Gikonyo J, had by a ruling dated 29th October, 2018 distributed ½ acre of the estate to Martin Mwiti and the balance equally between the protestor and the interested party to hold the said portion of land on behalf of themselves and that of their siblings and the ruling had neither been set aside nor reviewed.
2. A certificate of Confirmation of Grant was issued in respect thereof. It was subsequently rectified on 20th December, 2022 after the Applicant’s siblings ceded their share to him absolutely.
3. By summons dated 11th April, 2023, Applicant avers that the estate was partitioned into three portions LR. Abothuguchi/Githongo/4880, 4881 and 4882 for Martin Mwiti, Paul Mwiti M’Turuchiu and David Mukiira Muronga (on behalf of himself and his siblings) respectively but that Martin Mwiti has declined to move to his portion.



4. Martin Mwiti did not oppose the application. Judith Ncenge by her replying affidavit filed on 19th December, 2023 claimed that Joy Kathure had not been provided for and that the deceased had made a will distributing 11/2 acres of the estate to David Mukiira Muronga.
5. In my ruling of 15th December, 2022, I dismissed the allegation that neither Joy Kathure nor Judith Ncenge had been disinherited for Gikonyo J. has in his judgment dated 29th October, 2018, directed that their brother David Mukiira Muronga holds their father's share on his own behalf and on behalf of his siblings. I also reiterated that Joy Kathure nor Judith Ncenge ought to get their share from the portion distributed to their brother David Mukiira Muronga and not from the entire estate.
6. Clearly the issues raised in the replying affidavit do not amount to a response to the application dated 11th April, 2023 but address issues that were determined in the judgment dated 29th October, 2018 and ruling dated 15th December, 2022. Those issues are obviously res judicata.
7. The Court of appeal in the case of *William Koross (Legal personal Representative of Elijah C.A. Koross) v Hezekiah Kiptoo Komen & 4 others* [2015] eKLR addressed the issue of res judicata and stated as follows:

“The philosophy behind the principle of res judicata is that there has to be finality. Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives in. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.....”

8. In yet another case, the Court of Appeal in *Kenya Commercial Bank Limited v Benjob Amalgamated Limited* [2017] eKLR cited with approval the decision in *Lal Chand v Radha Kishan*, AIR 1977 SC 789 where it was stated that;

“The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.

The practical effect of the res judicata doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such suit.”

9. From the foregoing, I find that the summons dated 11th April, 2023 is not opposed. It is therefore hereby ordered;
 1. Martin Mwiti is hereby directed to move to his portion LR. Abothuguchi/Githongo/4880 by 31st January, 2024 failure to which he shall be forcefully evicted by the Court Bailiff.
 2. The Officer Commanding Githongo Police Station shall provide security during the enforcement of these orders by the Court Bailiff.
 3. These orders shall be served on Martin Mwiti and an affidavit of service in respect thereof filed in this court.
 4. Costs of this application shall be borne by Martin Mwiti.



5. Mention on 14th March, 2024 to confirm implementation of order (1) above.

DATED AT MERU THIS 20TH DAY OF DECEMBER 2023.

WAMAE. T.W. CHERERE

JUDGE

