



REPUBLIC OF KENYA



**KENYA LAW**  
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**FMH v AWM (Succession Cause 3143 of 2015)  
[2022] KEHC 523 (KLR) (Civ) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 523 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**SUCCESSION CAUSE 3143 OF 2015**

**AO MUCHELULE, J**

**MAY 31, 2022**

**IN THE MATTER OF THE ESTATE OF MWM ALIAS MM ALIAS MWM - (DECEASED)**

**BETWEEN**

**FMH ..... APPELLANT**

**AND**

**AWM ..... RESPONDENT**

**RULING**

1. The deceased MWM alias MWM alias MWM died intestate on November 10, 2015. She was the wife of the applicant FMH until August 24, 2007 when the marriage was dissolved in Nairobi CM Divorce No. xxx of 2015. They had married on September 5, 1970.
2. Following the death of the deceased, her daughter AWM (the respondent) on December 21, 2015 petitioned the court for the grant of letters of administration intestate indicating that the estate comprised of the following properties:-
  - a. Plot Number xx/x/B Umoja Phase II Nairobi;
  - b. Githunguri/Gathangari/T. xxx;
  - c. L.R. Mavoko Town Block 2/xxx;
  - d. half of Dagoretti/Mutuini/xxx;
  - e. pension from Teleposta Pension Scheme
  - f. Kengen shares;
  - g. A/C No. xxxxxxx with Barclays Banks – Queensway House Branch;



- h. A/C No. xxxxxxx with Barclays Bank – Queensway House Branch;
- i. Plot No. xx in Okoa Development Company;
- j. ordinary Shares in Safaricom; and
- k. ordinary Shares in Kengen.

The grant was issued on June 16, 2016 and confirmed on January 30, 2017. The entire estate went to her.

3. On February 1, 2018 the applicant brought the Summons dated January 30, 2018 seeking the revocation of the Grant issued on 16<sup>th</sup> October 2016 and confirmed on January 30, 2017. He also sought that the Land Registrar Kiambu be ordered to remove the restriction placed upon L.R. No. Dagoretti/Mutuini/xxx. The application was brought under Section 76 of the Law of Succession Act (Cap. 160) and Rules 44 and 73 of the Probate and Administration Rules.
4. In the grounds and supporting affidavit, the applicant's case was that the respondent was his daughter with the deceased but that when she filed the petition, got the grant and had it confirmed, she did not inform him. Secondly, the property Nairobi/Block xxx/xxx, Plot No. xx/x/B – Umoja Phase II and L.R. Mavoko Town Block x/xxx were matrimonial property jointly acquired between him and the deceased, and therefore he had an interest in the property which the petition and certificate of confirmation had failed to reflect. He stated that prior to the deceased's death, she had filed Nairobi HCC No. xx of 2010 (O.S) and Nairobi HCCC No. xx of 2013 (O.S) against him in which she wanted the declaration and division of matrimonial property acquired between them. In the first case, the properties claimed were Dagoretti/Mutuini/xxx, 10 acres of agricultural land in Embu and Buru Buru Estate Phase II, House No. xxx, and in the second case the property claimed was Dagoretti/Mutuini/xxx that was jointly registered in their names. In either case, she was claiming half of the properties. The deceased had died before the resolution of the cases.
5. The respondent opposed the application. Her case was that the only matrimonial property was Dagoretti/Mutuini/xxx that was jointly registered and in which the deceased had half share which she had included in the petition. The rest of the property, she stated, were purchased by the deceased after she had separated from the applicant. The separation was in 1992, the divorce being in 2007. This is what she deponed:-
  - 8) THAT as my mother and father had divorced officially, and I was living with my mother as her only child and beneficiary, I saw no need of informing the Applicant of anything in respect of the estate of my mother, but all the same, my petition was well advertised in the Kenya Gazette as usual, and if my father had any claim from the estate herein he ought to have participated within the time specified in such a notice, which he never did.
  - 9) THAT it is evident that my father only came to know about the succession matter hereof, perhaps when he went to the lands office in respect of parcel of land Dagoretti/Mutuini/xxx, for whatever intention he had about the same, only to find that I had registered a caution against any transactions thereof as I was wary of the same, and I think that perhaps my said caution has saved my entitlement thereof very much."
6. It is not in dispute that the respondent did not inform the applicant that she was petitioning for the grant and did not inform him when she sought the confirmation of the grant. It is evident that the applicant jointly owned Dagoretti/Mutuini/xxx with the deceased. No dispute was going to be heard and determined over this parcel of land without notice to him. Secondly, there was an outstanding dispute between the deceased and the applicant over matrimonial property. According to the deceased,



only certain properties were matrimonial properties. The applicant is saying that four of the properties in the petition and certificate of confirmation constituted matrimonial property in which he had a claim, and therefore was entitled about the petition. According to the respondent, the property in the petition and certificate, except for Dagoretti/Mutuini/xxx, were acquired by the deceased after she separated from the applicant.

7. It is notable that under the *Matrimonial Property Act*, No. 49 of 2013, property that was acquired by a couple during the subsistence of the marriage prima facie constitutes matrimonial property. It was not within the province of the respondent, knowing the relationship between the deceased and the applicant, to determine without reference to the later, which property was or was not matrimonial property between them. It follows that the existence of the applicant and his known claim to the property subject of the petition and certificate of confirmation were material facts that the respondent concealed from the court. Under Section 76 (b) of the Act, I revoke the grant that was issued to the respondent on 16<sup>th</sup> June 2016 and set aside the certificate of confirmation issued on January 30, 2017. All the property in the certificate of confirmation shall revert into the name of the deceased.
8. So that this dispute can be progressed, and under Section 47 of the Act and Rule 73 of the Probate and Administration Rules, a fresh grant shall issue in the joint names of the applicant and respondent. It is directed that, within 45 days, both of them, or any of them, shall file and serve an application for the confirmation of the grant. The dispute shall be mentioned on September 28, 2022 for directions on hearing.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY, 2022.**

**A.O. MUCHELULE**

**JUDGE**

