



**In Re Estate of Kwiriga Nkarichia (Deceased) (Succession Cause 184 of 2004) [2022] KEHC 11203 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11203 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 184 OF 2004**

**TW CHERERE, J**

**MAY 26, 2022**

**IN THE MATTER OF THE ESTATE OF KWIRIGA NKARICHIA (DECEASED)**

**BETWEEN**

**PAUL MWIRIGI M'KWIRIGA ..... PETITIONER**

**AND**

**BEATRICE KATHAMBI GATEMBO ..... 1<sup>ST</sup> APPLICANT**

**PHYLLIS RIGIRI MUTHAMIA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**DAVID KINOTI M'KWIRIGA ..... INTERESTED PARTY**

**JACOB MWENDA KWIRIGA ..... INTERESTED PARTY**

**RULING**

**Background**

1. Kwiriga Nkarichia(Deceased) died sometimes on 10<sup>th</sup> January, 1995. His estate comprised of LR. No. Nkuene/Uruku/302.
2. Letters of administration were issued to Paul M'kwiriga (Petitioner/Respondent) on 05<sup>th</sup> April, 2011. Subsequently, a Certificate of Confirmation of Grant was issued on 28<sup>th</sup> February, 2012 distributing the estate as follows:

L.R. No. Nkuene/Uruku/302

1. Paul M'kwiriga - 2.3 acres
2. David Kinoti M'kwiriga - 1.96 acres
3. Jacob Mwenda Kwiriga - 2.3 acres



3. By an order dated 12<sup>th</sup> August, 2021, the Certificate of Confirmation of Grant issued on 28<sup>th</sup> February, 2012 was annulled on the ground that the deceased's daughters Beatrice Kathambi Gatembo and Phyllis Rigiri Muthamia, had not been provided for. The Petitioner/Respondent was directed to apply for confirmation of grant within 30 days from today's date identifying respective shares of each of the beneficiaries to the estate including those of Beatrice Kathambi Gatembo and Phyllis Rigiri Muthamia, the Applicants herein.
4. By chamber summons dated 01<sup>st</sup> November, 2021, Applicants pray for orders that this Honourable Court be pleased to issue an order of Inhibition on L.R. No. Nkuene/Uruku/2515, 2516 and 2517 and for cancellation of the said titles.
5. The application is based mainly on the ground that subsequent to the issuance of the Certificate of Confirmation of Grant dated 28<sup>th</sup> February, 2012, Petitioner had caused deceased's estate in LR. No. Nkuene/Uruku/302 to be subdivided into 3 portions namely L.R. No. Nkuene/Uruku/2515, 2516 and 2517 all registered in his name as evidenced by certificates of official search annexed to the supporting affidavit and is unwilling to comply with the court orders issued on 12<sup>th</sup> August, 2021.
6. By his replying affidavit sworn on 29<sup>th</sup> March, 2022, Petitioner avers that this application is unnecessary. He does not explain why he has not complied with the orders of 12<sup>th</sup> August, 2021.
7. I have considered the summons in the light of affidavits on record. It is not disputed that the Certificate of Confirmation of Grant dated 28<sup>th</sup> February, 2012 was revoked by an order dated 12<sup>th</sup> August, 2021 mainly on the ground that Applicants who are daughters of the deceased had not been provided for. The contention by the Petitioner that this application is unnecessary is misguided for the reason that to date the estate remains registered in the name of the Petitioner to the exclusion of the other children of the deceased.
8. Section 83 of the Law of Succession Act Cap 63 Laws of Kenya (the Act) which deals with the duties of personal representatives provides that:
  - (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration
9. It is over 6 months since this court on 12<sup>th</sup> August, 2021 directed the Petitioner to apply for confirmation of the grant. He has neither complied with the court order nor explained the reason for such non-compliance. His non-compliance can however be inferred from the fact that the whole of deceased's estate remains registered in his name to the exclusion of all other beneficiaries.
10. Being the administrator, the Petitioner has entirely failed in his duties. Courts are not powerless when it comes to dealing with such wrong doing. The doctrine of abuse of process, based upon the inherent authority of every court to control its process and those persons who come before it, is a power incidental and necessary to the exercise of substantive jurisdiction. That power, together with rules of court and statutory provisions, enables the court to exercise its discretion to protect its integrity and process from abuse.
11. In *Central Bank of Kenya & Another vs. Ratalal Automobiles Limited & Others* Civil Application No. Nai. 247 of 2006, the Court of Appeal held that Judicial power in Kenya vests in the Courts and other tribunals established under the Constitution and that it is a fundamental tenet of the rule of law that



court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

12. Arising from the Petitioner's inaction and pursuant to the provisions of Section 47 of Act and in upholding this court's duty to provide just, expeditious, proportionate and affordable disposal of cases, I find that it is in the best interests of all concerned that letters of administration issued to the Petitioner on 05<sup>th</sup> April, 2011 be revoked.
13. The court also finds that deceased's estate cannot be distributed as long as the same remains registered in the name of the Petitioner and the cancellation of all title deeds in the name of the Petitioner is therefore necessary.
14. It is therefore hereby ordered that:
  1. Titles namely L.R. No. Nkuene/Uruku/2515, 2516 and 2517 all registered in his name of Paul Mwirigi M'kwiriga are hereby cancelled
  2. Upon cancellation, the estate shall revert to LR. No. Nkuene/Uruku/302 in the name of the deceased Kwiriga Nkarichia
  3. To ensure that the estate of the deceased is distributed without further delay, Beatrice Kathambi Gatembo is hereby appointed administrator of deceased's estate in place of Paul Mwirigi M'kwiriga
  4. Upon issuance of Letters of Administration and LR. No. Nkuene/Uruku/302 reverting to the name of the deceased Kwiriga Nkarichia, the administrator shall apply for confirmation of the grant after identifying respective shares of each of the beneficiaries to the estate
  5. Each party shall bear its own costs
  6. Mention on 20<sup>th</sup> September, 2022 to confirm compliance with the abovementioned orders

**DATED AT MERU THIS 26<sup>TH</sup> DAY OF MAY 2022**

**WAMAE T. CHERERE**

**JUDGE**

Court Assistant - Morris Kinoti

For Applicants - Mr. Mwirigi for Elijah Ogoti & Co. Advocates

For Respondent/Petitioner - Mr. Majau for P.E.M.Majau & Co. Advocates

For Interested Parties - N/A for Gichunge Muthuri & Co. Advocates

