



REPUBLIC OF KENYA



**In re Estate of Marieta Imathiu (Deceased) (Succession Cause 252 'A' of 2012) [2022] KEHC 10831 (KLR) (25 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10831 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 252 'A' OF 2012**

**PJO OTIENO, J**

**MAY 25, 2022**

**IN THE MATTER OF THE ESTATE OF MARIETA IMATHIU (DECEASED)**

**VICTOR KOOME ..... APPLICANT**

**VERSUS**

**GLORY KITHIRA RIMIRI ..... 1ST RESPONDENT**

**TERESIA WANJA NABEA ..... 2ND RESPONDENT**

**RULING**

1. By Summons under certificate of urgency dated 2/9/2020 brought under section 76, 45, 47 of the [Law of Succession Act](#), Rules 44(1) & 73 of the [Probate and Administration Rules](#) and all other enabling provisions of the law, the applicant seeks:
  1. That the grant of letters of administration issued to Gloria Kithira Rimiri and Teresia Wanja Nabea and confirmed on 3/10/2018 be revoked or annulled.
  2. That this honourable court be pleased to invoke administration interlineatio for the estate of the deceased.
  3. That the court orders all unknown persons, who are not beneficiaries to the deceased, constructing in the land of the deceased be stopped.
2. The grounds upon which the application is premised are set out in the body of the application and the supporting affidavit of Victor Koome, the applicant herein sworn on even date. He avers that he is a son of the deceased, and the respondents, who are strangers to the estate, filed this cause without his knowledge. He accuses the respondents of failing to disclose to court that they were not beneficiaries of the estate and they had no authority or consent from the beneficiaries to petition for letters of administration intestate. After the demise of his brother Fabiano Maitima M'Imathiu, the respondents fraudulently proceeded to sell his land. He avers that the respondents have sold and subdivided the estate property being L.R No. Nyaki/Munithu/105 to third parties who have started constructing and fencing it without any right to do so. It is just and fair that the grant be revoked and an administrator



nterlineatio be appointed pursuant to the inherent powers of the court in order to preserve the estate of the deceased.

3. The application was opposed by the supporting and replying affidavits of the respondents sworn on 19/11/2020 and 11/5/2021 respectively. They contend that they are beneficiaries to the estate and the matter was heard in the presence of the applicant. They deny either existence of any fraud in the making of the grant herein or selling any land belonging to Fabiano as alleged by the applicant. According to them, the applicant ought to have lodged an appeal to the Court of Appeal if he was dissatisfied with the decision of this court. They urge the court to dismiss the application, which they term as an afterthought and a waste of the court's time, as the applicant fully participated in these proceedings and he was provided for.
5. The application was directed to be canvassed by way of written submissions which were respectively filed by the applicant and the 1<sup>st</sup> respondent on 16/9/2021, 1/7/2021 and 10/2/2022. The applicant submitted that the proceedings to obtain the grant were defective in substance, as the respondents were not dependants of the deceased. He craved reliance on *Re Estate of Godana Songoro Guyo (Deceased)* (2020) eKLR for the proposition that, the life interest of a widow determines on her remarriage to any person. He submitted that the grant was obtained fraudulently by making of a false statement or concealment from the court that the respondents were not beneficiaries of the deceased. In his view, the grant has become useless and inoperative, following the demise of one of the beneficiaries and because it was issued to persons who were not beneficiaries to the estate. He submitted that the suit property should be preserved under the doctrine of lis pendens pursuant to Section 45 of the *Law of Succession Act*, and cited *Naftali Ruthi Kinyua v Patrick Thuita Gachure & Anor* (2015) eKLR where the necessity of the doctrine of lis pendens in the adjudication of land matters pending before the court was re-emphasized. He prayed that his application be allowed, as the grant was obtained by concealment of material facts resulting in deceit to the court.
6. The 1<sup>st</sup> respondent submitted that the applicant, who participated in the proceedings herein, ought to have appealed against the decision of the court if he was dissatisfied with it. She alluded to a Will left behind by Fabiano Maitima M'Imathiu (now deceased).

### **Analysis and Determination**

7. I have considered the affidavits and the submissions on record. The issue for determination is whether the grant issued to the respondents should be revoked.
8. Section 76 of the *Law of Succession Act*, which sets out the requirements for revocation or annulment of grant provides that:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (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 the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently; (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—



- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

9. The record reveals that on 20/11/2013 all the beneficiaries were present in court and they had equally signed a consent agreeing to the mode of distribution as proposed by the 1<sup>st</sup> respondent, in her affidavit in support of the summons for confirmation of the grant. However, the confirmation of the grant was deferred to 26/11/2013 as one of the beneficiaries was a minor. On 8/5/2015, the 2<sup>nd</sup> respondent applied for revocation of that grant, which was annulled on 10/10/2017. Since parties herein had vehemently refused to agree on the mode of distribution, the court in fulfilling its mandate ordered the estate property to be shared equally amongst Victo Koome, the applicant herein, Fabiano Maitima M’Imathiu, Sabina Regeria M’Imanyara, Jane Nkatha Mwangi, Teresia Wanja Nabea, the 2<sup>nd</sup> respondent herein and Glory Kithira Rimiri, the 1<sup>st</sup> respondent herein. That is the mode of distribution that the applicant seeks to disrupt by having the grant revoked. It is not disputed that the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent are beneficiaries of the deceased estate herein by virtue of being a grand daughter and a daughter in law to the deceased respectively. They are thus entitled to a share of the deceased estate. The deceased herein was survived by children only and Section 38 of the *Law of Succession Act* dictates that the estate property should be distributed equally amongst them, which is precisely what the court did. I find that the persons to whom the estate property was distributed are all beneficiaries of the estate. The applicant has not placed any material whatsoever before the court to support his allegation that the grant was obtained secretly through fraud or concealment of any material facts. Indeed, the respondents are beneficiaries of the estate and not strangers as mistakenly alluded to by the applicant. In the absence of any evidence to show that the 2<sup>nd</sup> respondent remarried after the demise of her husband M’Mugwika M’Imathiu, she remains and is presumed to be a daughter-in-law to the deceased. There is further no evidence of the alleged illegal sale and occupation of the estate property by third parties.
10. Does the demise of a beneficiary render the grant as useless or inoperative? I am afraid not. I draw guidance from *In re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR where the court expressed itself thus, “Consequently, I direct that the share of the deceased beneficiary, the father of the 1<sup>st</sup> administrator shall revert back to his estate to devolve to all the beneficiaries of his estate in equal shares.”
11. The upshot from the foregoing is that the applicant has failed to satisfy the pre-requisites under section 76 of the *Law of Succession Act*. The application dated 2/9/2020 therefore is dismissed on its entirety. No orders as to costs.

**DATED, SIGNED AND DELIVERED ‘ONLINE’ AT KAKAMEGA THIS 25<sup>TH</sup> DAY OF MAY 2022.**

.....  
**PATRICK J. O. OTIENO**



## **JUDGE**

In the presence of:

Ms. Mukami for the Applicant

No appearance for the Respondents

Court Assistant: Mwenda

