



REPUBLIC OF KENYA



**Mwiti & another v Kiugu & another (Succession Cause
245 of 2008) [2022] KEHC 3064 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 245 OF 2008**

TW CHERERE, J

JUNE 30, 2022

**IN THE MATTER OF THE ESTATE OF M'IKIOME
M'ITWERANDU ALIAS M'IKIOME M'TWERANDU (DECEASED)**

BETWEEN

JOHN MWITI 1ST PETITIONER

PAUL NTEERE M'IKIOME 2ND PETITIONER

AND

STANLEY KIUGU 1ST OBJECTOR

ISAAC KIRIMI 2ND OBJECTOR

RULING

Background

1. M'Ikiome M'Itwerandu alias M'Ikiome M'Twerandu (“the deceased”) to whom this succession cause relates died on April 26, 2008. The petitioners petitioned for grant of letters of administration where they stated that the deceased was survived by:
 1. Elizabeth Churubi - Widow
 2. Mary Mbuthu Nkoroi - Daughter
 3. Jane Gaceri Mwongera - Daughter
 4. Grace Kinanu Njue - Daughter
 5. William Kimonye M'Ikiome - Son
 6. Paul Nteere M'Ikiome - Son
 7. John Mwiti M'Ikiome - Son



8. Stanley Kiugu - Son
 9. Janet Karwitha - Daughter
 10. Edward Mugambi - Daughter
 11. Mary Mumbi Wachira - Daughter
2. His asset was listed as LR Abothuguchi/Githongo/111 ('the Suit Land'). On April 28, 2009 the petitioners were issued with grant of letters of administration intestate which were confirmed and a Certificate of Confirmation of Grant was issued on August 6, 2009.
 3. The objectors/Respondent's summons dated November 18, 2011 for revocation of the grant was dismissed by an order dated September 30, 2019.

Summons

4. By summons dated July 6, 2021, Petitioners/Applicants seek orders against the Respondents for eviction from the suit land so as to enable full administration of the estate. Application is supported by 2nd Applicant's affidavit sworn on July 6, 2021. 1st Respondent by his affidavit sworn on October 8, 2021 opposes the application on the grounds that Respondents have been in occupation of the suit land for over 30 years and further that there is a pending suit namely Githongo ELC No 24 of 2019.

Analysis and determination

5. I have considered the application in the light of the affidavits on record and the issue for determination is whether the order of eviction is merited.
6. It is not disputed that the parties herein and others are beneficiaries of deceased's estate who have not been able to enjoy the fruits of this cause due to the fact that the Certificate of Confirmation of Grant was issued on August 6, 2009 has to date not been implemented.
7. The ruling dated 23.06.2021 reveals that the Respondents' application to revive Githongo ELC No 24 of 2019 was dismissed on March 14, 2018 Respondents' contention that the suit is pending is therefore without merit. That an appeal against the dismissed has been filed is equally not merited for the reason that the annexed memorandum of appeal has not been filed.
8. From the foregoing, I find that nothing stands in the way of distribution but I understand the Applicants to say that they are apprehensive that Respondents may stand in the way.
9. Since Respondents are also beneficiaries of the estate, I find that it would not be in the interest of justice to evict them before distribution.
10. It is therefore hereby ordered:
 1. OCS Githongo Police Station do provide security for the surveyor to visit LR Abothuguchi/Githongo/111 for purposes of identifying the respective shares of each beneficiary in terms of the Certificate of Confirmation of Grant issued on August 6, 2009
 2. Costs shall be borne by the Respondents
 3. Mention on October 19, 2022 to confirm compliance with Order (1) above

DELIVERED AT MERU THIS 30TH DAY OF JUNE 2021

T. W. CHERERE



JUDGE

Appearances

Court Assistant - Kinoti

For Applicants - Mr. Karanja for Mwangi E.G & Co. Advocates

For Respondents - Mr. Mwiti for Joshua Mwiti & Co. Advocates

