



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Francis Manyara (Deceased) (Succession Cause  
96 of 1993) [2022] KEHC 10488 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10488 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 96 OF 1993  
TW CHERERE, J  
JUNE 23, 2022**

**BETWEEN**

**LUCY KATHURE MANYARA ..... APPLICANT**

**AND**

**JULIA KANYONI MANYARA ..... 1<sup>ST</sup> RESPONDENT**

**JANE MWENDWA KIMATHI ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH KINOTI ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**SUSAN NYAGUTHII KINOTI ..... INTERESTED PARTY**

**JOSEPH GACHECHE KINOTI ..... INTERESTED PARTY**

**FRANCIS KATHURIMA KINOTI ..... INTERESTED PARTY**

**MICHAEL MANYARA KINOTI ..... INTERESTED PARTY**

**JANE KARIMI MUTHEE ..... INTERESTED PARTY**

**JUDITH KARIMI MANYARA ..... INTERESTED PARTY**

**PARTY CAPITAL SACCO LTD ..... INTERESTED PARTY**

**RULING**

1. By summons dated 28<sup>th</sup> August, 2020, Lucy Kathure and Caroline Makena sought orders for revocation of the Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013 mainly on the ground that the share distributed to the daughters of the deceased was not identifiable the same having been described as balance to be held by Kinoti Manyara in trust for the daughters of the deceased.



2. When the matter came up before me for hearing on 10.06.2021, I perused the court file and seeing that the Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013 did not adequately provide for the daughters of the deceased granted an order for its revocation and also appointed two daughters of the deceased namely Lucy Kathure and Caroline Makena as co-administrators of the estate.

### Summons

3. Subsequently, Lucy Kathure filed summons amended on 01.12.2021 seeking:
- a. That an order do issue directing the Land Registrar Meru County to cancel all the certificates of title on land parcels The sub-division of Ontulili/ontulili Block 1 (katheri) 1270, 1271, 1271, 2432, 2433, 2434 and 2435 previously Katheri Davis Nanyuki No. 534 and revert the title to the name of Francis Manyara (Deceased) notwithstanding that the resultant title deeds may not have ben surrendered
  - b. That deceased's estate be distributed redistributed as follows:
    - Abothuguchi/katheri/35
    - ¼ share each to
      - Julia Kanyoni Manyara (Life Interest)
      - Jane Mwendwa KimathiMwendwa ManyaraTonny Mutuma Manyara
    - Bula Pesa Plot No. 921 Isiolo
    - ½ share developed to Tonny Mutuma Manyara
    - ½ share to Kinoti Manyara
    - Meru Municipality Plot No. B/9 "A
    - ½ share to Jane Mwendwa Kimathi
    - ½ share to Judithi Karimi Manyara
    - Kibirichia Plot No. 84
    - Kinoti Manyara
    - Ontulili/Ontulili Block 1 (Katheri) formerly Katheri Davis Nanyuki No. 534
    - Caroline Makena Manyara 1.25 Acres
    - Lucy Kathure Manyara 1.25 Acres
    - Joy Karoki Manyara 1.25 Acres
    - Susan Kanana Manyara 1.25 acres
    - Mary Mwendwa Manyara 1.25 Acres
    - Jane Karimi Muthee 1.25 Acres
    - Judith Karimi Manyara 1.25 Acres
    - Marsabit Plot No 11699/8
    - ½ share to Jane Mwendwa Kimathi
    - ½ share to Judith Karimi Manyara



Plot No. 83 Likii Nanyuki

Kinoti Manyara

4. The application is supported by the supporting affidavit sworn on 21<sup>st</sup> May, 2021 by Applicant. She avers that the asset previously known as Katheri Davis Nanyuki No. 534 was now LR. NO. Ontulili/Ontulili Block 1(Katheri)1270 which had been partitioned into 7 portions 4 of which were registered in the names of his brother Kinoti Manyara's wife and 3 children.
5. Kinoti Manyara, by his replying affidavit sworn on 29.09.2021 opposed the application on the ground that it is not merited for the reason that the estate was distributed with the consent of all the beneficiaries. Annexed to his affidavit is a Rectified Certificate of Confirmation of Grant dated 24.10.2019 by which deceased's estate was distributed with the consent of all beneficiaries having signed a consent as follows:

Juliah Kanyoni Manyara 26932 Ordinary Shares Barclays Bank of Kenya

Tonny Mutuma Manyara 2080 Ordinary Shares EABL

Abothuguchi/katheri/35

½ Share Tonny Mutuma Manyara

½ Share jointly to

Mary Mwendwa Manyara

Susan Kanana Joy Karoki

Lucy Kathure

Caroline Makena

Bula Pesa Plot No. 921 Isiolo

½ share developed to Tonny Mutuma Manyara

½ share to Kinoti Manyara

Meru Municipality Plot No. B/9 "A

½ share to Lemmuel Kithinji Manyara

½ share to David Kimathi Manyara

Kibirichia Plot No. 84

Kinoti Manyara

Katheri Davis Nanyuki No. 534

Kinoti Manyara 4 Acres

Lemmuel Kithinji Manyara 3.5 Acres

Jane Karimi Muthee 1 Acre

Kinoti Manyara Balance to hold in trust for deceased's Daughters

Marsabit Plot No 11699/8

½ share to David Kimathi Manyara



½ share to Judith Karimi Manyara

6. Francis Kathurima Kinoti, s/o Kinoti Manyara by his replying affidavit sworn on 22.2.2021 opposed the application on the ground that partitions from LR. NO. Ontulili/Ontulili Block 1(Katheri)1270 had already been disposed off to innocent purchasers for value.
7. Eliezer Kaburu, Chief Executive Officer of Capital Sacco Ltd by his replying affidavit sworn on 12.10.2021 deposed that Ontulili/Ontulili Block 1(Katheri)2424 which was a subdivision of Ontulili/Ontulili Block 1(Katheri)1270 had been charged for a loan of Kshs. 15,000,000/- by Susan Nyaguthii Kinoti and the Sacco stands to suffer loss if the title is cancelled.

### **Analysis & Determination**

8. I have considered the summons in the light of the affidavits on record, the submissions by the parties. I have also considered the previous orders of this court and in particular the ruling dated 24.11.2019. By that ruling, the court rectified the error contained in the Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013 and by a Rectified Certificate of Confirmation of Grant dated 24.10.2019 distributed ½ share of Abothuguchi/katheri/35 to the daughters of the deceased namely Mary Mwendwa Manyara, Susan Kanana, Joy Karoki, Lucy Kathure and Caroline Makena.
9. The said Rectified Certificate of Confirmation of Grant dated 24.10.2019 reveals that Katheri Davis Nanyuki No. 534 which is now LR. No. Ontulili/Ontulili Block 1(Katheri)1270 was distributed as follows:
  - Kinoti Manyara 4 Acres
  - Lemuel Kithinji Manyara 3.5 Acres
  - Jane Karimi Muthee 1 Acre
  - Kinoti Manyara Balance to hold in trust for deceased's Daughters
10. The court record demonstrates that the application dated 17.12.2018 for rectification of the Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013 was supported by a consent dated 17.12.2018 signed by the widow and all the children of the deceased.
11. From the foregoing, I find that as at 10.06.2021 when this court allowed the summons dated 28<sup>th</sup> August, 2020, and revoked the Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013, the said Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013 did not exist the same having been rectified and a Rectified Certificate of Confirmation of Grant dated 24.10.2019 having been issued.
12. Having said that, I find that the orders dated 10.06.2021 revoking the Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013 were obtained by Lucy Kathure and Caroline Makena fraudulently and by the making of a false statement and/or by concealment from the court of the existence of The Rectified Certificate of Confirmation of Grant dated 24.10.2019 that had been issued with their consent and with the consent of all the other beneficiaries of the deceased.
13. As result, the orders that commend to this court and which I hereby issue are as follows:
  - 1) The order issued on 10.06.2021 revoking the Further Amended Certificate of Confirmation of Grant dated 28<sup>th</sup> November, 2013 is set aside in its entirety



- 2) The order issued on 10.06.2021 appointing Lucy Kathure and Caroline Makena as co-administrators of deceased's estate is similarly set aside in its entirety
- 3) The summons amended on 01.12.2021 seeking an order to direct the Land Registrar Meru County to cancel all the certificates of title on land parcels The sub-division of Ontulili/ontulili Block 1 (katheri) 1270, 1271, 1271, 2432, 2433, 2434 and 2435 previously Katheri Davis Nanyuki No. 534 and revert the title to the name of Francis Manyara (Deceased) has no merit and it is dismissed
- 4) It is ordered that the balance of Katheri Davis Nanyuki No. 534 which is now LR. No. Ontulili/Ontulili Block 1(Katheri)1270 which was distributed to Kinoti Manyara to hold in trust for deceased's daughters be transmitted in the joint names of the daughters of the deceased namely Mary Mwendwa Manyara, Susan Kanana, Joy Karoki, Lucy Kathure and Caroline Makena
- 5) Applicant shall bear the costs of this summons
- 6) Mention on 19<sup>th</sup> October, 2022 to confirm compliance with order (4) above

**DATED AT MERU THIS 23<sup>rd</sup> DAY OF JUNE 2022**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistant - Morris Kinoti

For Applicant - John Muthomi & Co. Advocates

For 1<sup>st</sup> Respondent - Leonard Ondari & Co. Advocates

For 2<sup>nd</sup> & 3<sup>rd</sup> Respondents - Mwirigi Kaburu & Co. Advocates

For the 3<sup>rd</sup> to 6<sup>th</sup> I.Parties - Kaberia Arimba & Co. Advocates

For 7<sup>th</sup> I.Party - Mwenda, Mwarania, Akwalu & Co. Advocates

