



In re Estate of of M’Muga M’Magiri (Deceased) (Succession Cause 544 of 2013) [2022] KEHC 14506 (KLR) (27 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 544 OF 2013
TW CHERERE, J
OCTOBER 27, 2022
(ORIGINAL SUCCESSION CAUSE NO. 2812 OF 1995 AT NAIROBI)
IN THE MATTER OF THE ESTATE OF M’MUGA M’MAGIRI
(DECEASED)**

BETWEEN

SOFIA GAKII BENEFICIARY

AND

JERICA KAGWIRIA M’MUGA 1ST ADMINISTRATOR

CHARITY IGOKI M’MUGA 2ND ADMINISTRATOR

DOUGLAS MWITI MUGA 3RD ADMINISTRATOR

AND

SILAS MUTHURI M’LIKANYA APPLICANT

AND

LAND REGISTRAR, MERU CENTRAL DISTRICT RESPONDENT

RULING

1. By a judgment dated February 27, 2019, the court after hearing the parties herein ordered that the estate of the deceased be distributed as follows:

Land Parcels

1. Abothuguchi/Mariene/ 868
2. Rugusu Market No 2 ‘A’



3. Plot No 22 'A' Kangeta Market
4. Plot No 3 Kangeta Market
5. Plot No 3 'B' Gatimbi Market
6. Abothuguchi/ L. Kiija/ 225
7. Abothuguchi/Mariene/372
8. Land Reference Kiamuri 'A'
9. Plot No 456 Isiolo
10. Thika Scheme V Plot – L. r No 7240/2 with Langata Development Company

BANK ACCOUNTS

1. Standard Chartered Bank
A/C No 0120012400XXX
2. Kenya Commercial Bank
A/C No 181175XXX
3. HFCK Savings
A/C No 1/11XXX
4. National Bank of Kenya Limited
A/C No 74049XXX

PERSONAL INVESTMENTS

1. Mukiria Farmers Co-op Society Limited
Share Certificate No XXX
 2. Kenya Commercial Bank Shares
A/C No 085XXX
 3. Government Treasury Bill
Issue No 1XXX
 4. Nkando Farmers' Co-operative Society Limited
Membership No 2XXX
 5. KNFU Membership No 38 -00251618-10
 6. Kshs 14,400/- with Ntoringwi Scheme
 7. Meru Central Farmers' Co-operative Society Ltd Member No 1016
2. Consequently, a Certificate of Confirmation of Grant dated March 13, 2019 was issued distributing all of deceased's estate equally to the beneficiaries.
 3. By summons dated November 25, 2019 filed on even date, interested party/ applicant seeks the following orders.
 - a. Inhibition on the following land parcels



- i. LR Abothuguchi/Mariene/ 1665-1667
 - ii. LR Abothuguchi/Mariene/ 1772-1773
 - iii. LR Abothuguchi/Mariene/ 1437-1441
 - iv. LR Abothuguchi/Mariene/ 2520 - 2524
- b. Revocation of the grant issued to Jerica Kagwiria M’Muga Charity Igoki M’Muga and Douglas Mwiti Muga on February 27, 2009
 - c. Rectification of the land register to revert LR Abothuguchi/Mariene/ 2520- 2524, LR Abothuguchi/Mariene/ 1665-1667, LR Abothuguchi/Mariene/ 1440, LR Abothuguchi/Mariene/ 1772-1773 and LR Abothuguchi/Mariene/ 1437-1441 to the name of the deceased
 - d. Review of decision rendered on February 27, 2019 and revert 3 acres of LR Abothuguchi/Mariene/ 868 to the deceased
 - e. Revocation of Letters of Administration issued to Jerica Kagwiria M’Muga Charity Igoki M’Muga and Douglas Mwiti Muga on February 27, 2009

Analysis and determination

4. None of the respondents opposed this summons. There’s evidence in the form of extracts of the land register and search certificates that the title for LR Abothuguchi/Mariene/868 was on November 14, 2007 closed after it was subdivided into three portions namely LR Abothuguchi/Mariene/1428, 1429 and 1430. Certificates of search annexed to the supporting affidavit reveal that on 19th November, 2007, LR Abothuguchi/Mariene/1428 was registered in the name of Silas Muthuri M’Likanya and was subsequently subdivided into five portions namely LR Abothuguchi/Mariene/ 1437, 1438, 1439, 1440 and 1441. LR Abothuguchi/Mariene/ 1441 was subsequently on September 19, 2019 closed after it was subdivided into 5 portions namely LR Abothuguchi/Mariene/ 2520, 2521, 2522, 2523 and 2524.
5. On the other hand, LR Abothuguchi/Mariene/1429 was registered in the name of Stanley Kirima M’Bagaine. LR Abothuguchi/Mariene/1430 was registered in the joint names of Jerica Kagwiria M’Muga, Charity Igoki M’Muga and Douglas Mwiti Muga and was subsequently transferred to Jerica Kagwiria M’Muga on November 19, 2007 and later to Stanley Kirima M’Bagaine on March 18, 2009. The title was then closed on May 20, 2011 after it was subdivided into two portions namely LR Abothuguchi/Mariene/1604 and 1605. LR Abothuguchi/Mariene/1604 was subsequently closed after it was subdivided into 4 portions namely LR Abothuguchi/Mariene/ 1665, 1666, 1667 and 1668 and the later was later closed and subdivided into two portions namely LR Abothuguchi/Mariene/ 1772 and 1773.
6. The foregoing demonstrates how deceased’s estate has been mutilated rendering impossible the execution of this court’s judgment dated February 27, 2019 and the subsequent certificate of confirmation of grant dated March 13, 2019.
7. It is apparent that even as at the time of the judgment on February 27, 2019, deceased’s estate comprised in LR Abothuguchi/Mariene/868 did not exist the title having been closed on November 14, 2007 after it was subdivided into three portions namely LR Abothuguchi/Mariene/1428, 1429 and 1430 as stated hereinabove. Of interest to note is that the administration did not bring this information to the attention of the court.



8. Section 83 of the Law of Succession Act cap 160 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. Over three years since the certificate of confirmation of grant was issued, the administrators of the estate have not distributed the estate one of the reasons being that they have participated in intermeddling with the estate making its distribution problematic.
10. Being administrators, respondents have entirely failed in his duties. But 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 v Ratalil 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 administrators' 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 Jerica Kagwiria M'Muga Charity Igoki M'Muga and Douglas Mwiti Muga on February 27, 2009 be revoked.
13. The court also finds that deceased's estate cannot be distributed as long as the same remains registered in the names of third parties and the cancellation of all resultant titles arising from Abothuguchi/Mariene/ 868 is therefore obligatory.
14. For the foregoing reasons, it is hereby ordered that:
1. Letters of Administration issued to Jerica Kagwiria M'Muga Charity Igoki M'Muga and Douglas Mwiti Muga on February 27, 2009 are hereby revoked.
 2. Letters of Administration shall issue to Sofia Gakii pending the appointment by the family, of representatives from the 1st and 3rd houses who shall be joint administrators with Sofia Gakii
 3. All subdivisions and resultant titles arising out of subdivision of LR Abothuguchi/Mariene/868 are hereby cancelled.
 4. Upon cancellation of the resultant titles, LR Abothuguchi/Mariene/868 shall revert to the name of the M'muga M'magiri (Deceased)
 5. Mention on December 15, 2022 to confirm compliance with the abovementioned orders and for further orders

DATED AT MERU THIS 27TH DAY OF OCTOBER 2022





T W CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Beneficiary/applicant - Mr Kimaita for Wambugu & Muriuki Advocates

For 1st Administrator - N/A for Charles Kariuki & Kiome Associate Advocates

For 2nd Administrator - N/A for Kaumbi & Co Advocates

For 3rd Administrator - N/A for MG Kaume & Co Advocates

For Silas Muthuri - N/A for Charles Kariuki & Kiome Associate Advocates

