



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. 43 OF 1997**  
**ESTATE OF THE LATE SAMUEL M'IBIRI M'BAGIRI**  
**IN THE MATTER OF APPLICATION FOR PROVISION BY**  
**BETWEEN**  
JACOB MUTUMA M'IBIRI.....1<sup>ST</sup> ADMINISTRATOR  
**AND**  
JOEL KAURA SAMUEL.....1<sup>ST</sup> PROTESTOR  
JANET KIGETU MUTHAMIA.....2<sup>ND</sup> PROTESTOR  
JAMES THURANIRA.....3<sup>RD</sup> PROTESTOR  
NAOMI KANANA MUTUNGL.....4<sup>TH</sup> PROTESTOR  
ZIPPORAH KINYA KANGWANA.....5<sup>TH</sup> PROTESTOR  
SALOME NDURU S. MUGAMBI.....6<sup>TH</sup> PROTESTOR  
GLORY KANANU.....7<sup>TH</sup> PROTESTOR

**RULING**

**Background**

1) Following the hearing *inter partes* of the protesters' protest, the court by a ruling dated 21<sup>st</sup>, January, 2019 rendered itself as follows:

**From evidence on record it appears that it is Festus Muthamia and Joel Kaura who didn't benefit inter vivos from the estate of the deceased and they are therefore entitled together with the deceased persons daughters from the properties that are still in the name of the deceased**

2) Consequently, the court distributed LR. Kiirua/Naari/92 measuring 13.59 acres as follows:

- a. Charity Mwari – 2 acres
- b. Harun Gitonga – 3 acres
- c. Festus Muthamia – 2.295 acres
- d. Joel Kaura – 2.295 acres
- e. William Mukiothirikari – 0.50 acre

- f. Naomi Kanana – 0.50
- g. Gladys Ncekei – 0.50 acre
- h. Kathambi -0.50 acre
- i. Kathure – 0.50 acre
- j. Jane Mukiri -0.50 acre
- k. Lilian – 0.50 acres

3) Mathematically, it is apparent that the distribution as stated hereinabove adds up to 13.09 acres and not 13.59 acres.

4) The Administrator has explained that the remaining 0.5 acres ought to have been distributed to Glory Kananu but her name was inadvertently omitted.

5) I have considered the explanation by the Administrator and I have no reason to doubt that it was the court’s intention that all the daughters of the deceased including Glory Kananu get 0.5 acres of **LR. Kiirua/Naari/92**. I am also persuaded that the name of Glory Kananu was inadvertently omitted from the list of beneficiaries for the said land parcel and that explains the undistributed 0.5 acres from the said land.

6) Having said that, I find that had this information been brought to the attention of the court, the order made on 18<sup>th</sup> March, 2021 revoking the grant would not have been issued. I can confidently say that the revocation was made in error the parties having not disclosed all material particulars to the court.

7) I have considered the protests that propose to undo the mode of distribution adopted by the court after hearing the protestors and other parties *inter partes*.

8) With respect, the issues raised by the Protestors are *res judicata*. The Court of appeal in the case of **William Koross (Legal personal Representative of Elijah C.A. Koross) v Hezekiah Kiptoo Komen & 4 others [2015] eKLR** addressed the issue of *res judicata* and stated as follows:

**“The philosophy behind the principle of *res judicata* is that there has to be finality. Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives in. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.....”**

9) In yet another case, the Court of Appeal in **Kenya Commercial Bank Limited v Benjoh Amalgamated Limited [2017] eKLR** cited with approval the decision in **Lal Chand v Radha Kishan, AIR 1977 SC 789** where it was stated that;

**“The principle of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.**

**The practical effect of the *res judicata* doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such suit.”**

10) Most unfortunately, the protests appear to be a repudiation and negation of the salutary aims of the *res judicata* bar. This court declines to allow the Protestors to improperly and impermissibly re-litigate endlessly, for litigation must come to an end.

11) The issues raised in the protests have been litigated upon by the same parties and the protests herein are more of an appeal against the determination of this court concerning distribution of deceased’s estate.

12) By seeking an order to redistribute the estate, I understand the Protestors to ask this court to take a different view from the previous decision by this court concerning the distribution of deceased’s estate.

13) This court cannot sit on appeal on its own judgement. The Protestors have a right to challenge the determination of this court in the proper forum, instead of improperly and impermissibly re-litigating on matters that have already been determined.

14) From the foregoing analysis, I make the following orders:

1. **The order of this court dated 18<sup>th</sup> arch, 2021 revoking the grant is set aside *suo moto***
2. **The order of the court dated 21<sup>st</sup> January, 2019 distributing the estate is upheld with variation that Glory Kananau shall**

get 0.5 acres of LR. Kiirua/Naari/92

3. The certificate of confirmation of grant dated 21<sup>st</sup> January, 2019 shall be rectified to include the 0.5 acre share to Glory Kananau on LR. Kiirua/Naari/92

4. Each party shall bear its own costs

DATED AT MERU THIS 16<sup>TH</sup> DAY OF DECEMBER 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For 1<sup>st</sup> Administrator - M/s. Kaumbi & Company Advocates

For 1<sup>st</sup> to 6<sup>th</sup> Protestors - M/s. Mutuma Gichuru & Associates

For 7<sup>th</sup> Protestor - M/s. Mutegi Mugambi & Company Advocate