



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**SUCCESSION CAUSE NO. 584 OF 2009**  
**IN THE MATTER OF THE ESTATE OF THE M'IKIARA MUTIRITHIA - DECEASED**  
**JULIA MBURA M'IKIARA**  
**SAMUEL MUNGATHIA M'IKIARA.....PETITIONER**  
**VS**  
**ISAAYA IKAMATI M'NJAA.....OBJECTOR**

**JUDGEMENT**

Application dated 19<sup>th</sup> November 2009 filed by Isaaya Ikamati M'Njaa sought to revoke or annul the grant of Letters of Administration made to Julia Mbura M'Ikiara and Samuel Mungathia M'Ikiara on 23<sup>rd</sup> July 2009 in Maua SPM Court Succession cause no. 12 of 2009;

The application also sought for an order of inhibition against parcel No. Njia/Burieri/287 pending hearing and determination of Meru H.C.C A Number 521 of 2007 and Maua SPM Court L.D.T case Number 4 of 2005 Maua SPM Court Succession cause file Number 12 of 2009 was availed and the records indicate that temporary Letters of Administration was issued to petitioners therein Julia Mbura and Samuel Mungathia on 23<sup>rd</sup> July 2009. The grounds upon which application was made are found in supporting affidavit and grounds on face of the application to the effect grant was obtained by means of untrue allegations of fact essential in law to justify grant. It was also claimed the proceedings were defective in substance. It was claimed that outcomes in High Court at Meru C. Appeal No. 52 of 2007, Maua SPM Court Land Dispute Tribunal Ref No. 11 of 2005 and Embu Land Disputes Tribunal Appeal No. 65 of 2008 shall be rendered nugatory if the Respondents are not restrained from distributing land parcel No. 287 to the beneficiaries of the estate of the deceased.

The applicant claimed that prior to their death his father and his uncle were litigating over land in question in Meru HCA No 521 of 2007 Embu (Eastern Province) LDT Appeal No.65 of 2005 Maua SPM Court LDT case Number 11 of 2005 and Meru North District LDT case No. 17 of 2005. He claimed the land in question was family and therefore ancestral land if distributed as estate of his uncle they will be disinherited. Applicant said the succession cause was filed discreetly without his information although the petitioners knew he had an interest on the outcome of the cases aforesated.

Certificate of search for parcel No. Njia/Buri-E-Ruri/287 has an inhibition indicating no dealings until HCA No. 52 of 2007 is determined.

- Current status not disclosed.
- Status of HCA 52/2007 is also not indicated, only Memorandum of Appeal filed on 18.05.2007 is enclosed.
- To Check if Appeal No. 52/07 is determined.

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- Whether gift inter vivos
- Whether land could have been held in Trust for applicant and kin and not the petitioners.
- Where are the other beneficiaries of the deceased as listed in form P & A 5?
- Other assets listed Njia/Cia –Mwendwa/1435 and Njia/Buri –e-Ruri/2013?
- Grant made on 23.7.2009 in Maua SPM Court No. 12 of 2009 not yet confirmed and distribution can't be done without it being confirmed.

In H.C.C.A No. 52 of 2007, the applicants father Ntonya Mutirithia was Respondent where the petitioners' husband and father M'Ikiara Mutirithia had been ordering Meru North Land Disputes Tribunal Case No. 17 of 2005 to give Ntonya Mutirithia 0.60 acres of land out of parcel No. Njia/ Buri-eruri/287. The petitioners husband and father appealed to Provincial Appeal Committee Eastern province vide Appeal No. 65 of 2005, which Committee upheld the finding of the District Land Disputes Tribunal when appeal was filed, a stay of the Land Disputes Tribunals order which was adopted in Misc LDT No. 11 of 2005 at Meru CM's court was made.

Appeal No. 52 of 2007 abated upon demise of the appellants the dependant. The personal representatives of the appellant were in court lastly on 19<sup>th</sup> November 2010 and 10<sup>th</sup> August 2011 when Hon. Justice Lesiit and Kasango for reasons by the time that application for substitution was brought more than 2 years after the death of the appellant, the appeal had abated and therefore the personal representatives ought to have revived/reinstated the suit 1<sup>st</sup> before seeking substitution and Hon. Justice Kasango established that infact the persons who sought to come in place of the deceased appellant who are the administrators in Maua CMC Succession No. 12 of 2009 had actually, merely petitioned for Letters of Administration and had not obtained even Limited Grant for purposes of filing a suit on behalf of the deceased appellant and therefore the application was also dismissed.

The finding of LDT and the Appeals Committee that the father of the applicant herein is entitled to 0.60 acres out of L.R. No. Njia/Buri-eruri which was confirmed by the Appeals Committee therefore remains standing. It therefore follows that 0.60 acres out of L.R. No. Njia/Buri-eruri/287 should form part of the estate of late Ntonya Mutirithia to be distributed to his beneficiaries and or dependants. The administrators in Maua CMC succession cause No. 12 of 2009 were aware of the existence of Appeal No. 52 of 2007 as they tried to take it up long after it had abated but failed to factor in the share of the applicants deceased father which share was ordered by the court. In that respect there was failure to disclose material facts but the applicant herein will be joined as Administrator in this cause so that when confirmation is done 0.60 acres should be transmitted to him as Administrator of the estate of Ntonya Mutirithia for purpose of distributing to beneficiaries Ntonya Mutirithia. Each party to bear own costs.

**Judgement Signed, Delivered and Dated this 27<sup>th</sup> Day of June 2017.**

**HON. A.ONG'INJO**

**JUDGE**

In the presence of:

C/A: Penina

Respondent :- M/s Kiautha Arithi & Advocate for Respondent

Applicant:- M' Anampiu Advocate H/B for Omari Advocate for applicant.

**HON. A.ONG'INJO**

**JUDGE**