

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2100 OF 2010

**IN THE MATTER OF THE ESTATE OF KIMANI RIRIU KIMANI ALIAS KIMANI RIRIU
(DECEASED)**

STEPHEN WAWERU KIRUNGE.....APPLICANT

VERSUS

JOHN WAWERU CHEGE.....RESPONDENT

JUDGMENT

1. The deceased Kimani Ririu Kimani alias Kimani Ririu died intestate on 28th August 2002 at Ting'ang'a in Kiambu. On 21st July 2009 his son John Waweru Kimani (the respondent) filed Succession Cause No. 224 of 2009 at Kiambu Chief Magistrate's Court. In the petition, he stated that the deceased was survived by a widow Hannah Waithira Chege and eleven (11) children, two of whom had died leaving families. Those who consented to the filing of the petition were Veronicah G. Chege, Sera Wangari, Virginia Nyokabi Chege, Teresia Wanjiru Wanjema and Philomena Watiri Matheri. The estate of the deceased was indicated as Ndumberi/Tinganga/372 measuring about 0.39 acres.

2. On 29th October 2009 a grant was issued to the respondent. On 27th July 2010 a certificate of confirmation of the grant was issued. It was indicated that half of the parcel would be registered in the name of the respondent to hold on his behalf and on behalf of Veronicah G. Chege, Virginia Nyokabi Chege, Sarah Wangari, Teresia Wanjiru Wanjema and Philomena Watiri Matheri. The other half was to be registered in the name of Hannah Waithira Chege to hold on her behalf and on behalf of Mary Njuni Gichungo, Hannah Waithira Chege, Mary Wanjiku Ngibu, Stephen Waweru Chege, James Ng'ang'a Chege and Lucy Nyokabi Kaptere.

3. On 15th October 2010 the applicant Stephen Waweru Kirunge filed this application seeking the revocation of the grant. His main contention was that the deceased left no property, no estate that could be shared by the family, or at all. He stated that land parcel Ndumberi/Tinganga/372 that the respondent had distributed did not belong to the deceased but to his step-brother Chege Waweru Kimani alias Kimani Ririu who died on 23rd June 2010. The applicant and Chege Waweru Kimani alias Kimani Ririu were brothers and both were-step brothers of the deceased; that the deceased and Chege Waweru Kimani both shared the name Kimani Ririu. The applicant further swore that the deceased owned land parcel Ndumberi/Tinganga/374 which he had shared to his two sons Stephen Waweru Chege and James Ng'ang'a Chege. These two were sons from the deceased's second widow Hannah Waithira Chege. This house had in all four children, the two sons and two daughters. The deceased's first house of Jane Gakenye Chege had seven children, who included the respondent. It had in all three sons (two have since died but leaving a family each) and four daughters. It was the evidence of the applicant that there was a time the deceased sold a plot at Ting'ang'a for Kshs.1,200/= The money was violently snatched from him by the respondent and his brother and given to their mother (Jane Gakenye Chege) who went and bought shares in Githurai Ting'ang'a Company. The shares resulted in her being allocated 16 plots which she refused to share with the deceased. This is the reason why the deceased refused to share land parcel Ndumberi/Ting'ang'a/374 with this house. He instead shared it to the two sons of the house of Hannah

Waithira Chege. Stephen Waweru Chege from this house supported this application and swore affidavits in this regard. He stated that in the confirmed grant he, his brother and sisters had been given part of Ndumberi/Ting'ang'a/372 but they declined the offer as this land never belonged to their father (the deceased). He stated that he was never consulted in the filing of the petition, and neither was his consent sought at any stage of the proceedings.

4. The respondent opposed the application and reiterated that land parcel Ndumberi/Ting'ang'a/372 belonged to the deceased. He denied that the deceased owned Ndumberi/Ting'ang'a/374, or that he shared the land to two of his sons before he died. He agreed that the deceased had two wives: his mother Jane Gakenye Chege and Hannah Waithira Chege, the mother of Stephen Waweru Chege and James Ng'ang'a Chege. He stated that he informed the entire family when he was going to file the Cause at Kiambu. He, however, agreed while being cross-examined by Mr Charagu for the applicant that he did not seek the consent of all family members and neither did he call them to court at the time of the confirmation of the grant. He did not call any witnesses.

5. That all the stated beneficiaries were not present during the confirmation of the grant and neither was their consent sought or obtained would be enough reasons to revoke the grant. However, the issue at hand is whether land parcel Ndumberi/Ting'ang'a/372 was the estate property of the deceased that was available for distribution to his family.

6. When the respondent distributed Ndumberi/Ting'ang'a/372 during confirmation he gave half of it to the house of Hannah Waithira Chege who was his step-mother and mother of Stephen Waweru Chege. In support of this application, Stephen Waweru Chege has on behalf of their house declined this offer of land. He stated, like the applicant, that land parcel Ndumberi/Ting'ang'a/372 did not belong to the deceased and therefore he could not share in it. Secondly, it was the evidence of Stephen Waweru Chege, and indeed the applicant, that, during his lifetime, the deceased owed land parcel Ndumberi/Ting'ang'a/374 which he shared to Stephen Waweru Chege and his brother James Nganga Chege. There is an annexed green card that shows that the deceased owned the parcel which he then passed to Stephen Waweru Chege and John Ngugi Chege. That evidence was not controverted. It is interesting that the respondent, or his mother's house, did not lay claim to this parcel of land. Now that this house did not benefit from the land, why would the respondent be giving the house of Hannah Waithira Chege half of Ndumberi/Ting'ang'a/372? Thirdly, Stephen Waweru Chege produced minutes of elders and family meetings convened by the deceased on 7th July 2002 and 7th July 2002 (he died on 28th August 2002) where he was complaining about the fact that the respondent's family had robbed him of Kshs.1,200/= which their mother had used to buy plots. He wanted two of the plots but the house had refused to surrender. This is why he decreed that the land he owed would go to the house of Hannah Waithira Chege. Fourthly, both applicant and Stephen Waweru Chege stated, and this was not disputed, that the respondent's mother was buried on Ndumberi/Ting'ang'a/374. This was at the respondent's request. Why was she not buried on Ndumberi/Ting'ang'a/372 if the land belonged to the deceased? This is why the applicant is saying that this land never belonged to the deceased.

7. I have considered all the evidence in this case and have come to the conclusion that the deceased Kimani Riri Kimani alias Kimani Riri never owned any property at the time of his death. I find that he was not the owner of land parcel Ndumberi/Ting'ang'a/372. It follows that this parcel was not available for distribution at the confirmation of the grant to the respondent. It is for these reasons that I allow the application dated 14th October 2010 and filed on 15th October 2010. I revoke the grant that was issued to the respondent on 27th October 2009 and confirmed on 21st July 2010. The respondent shall pay the costs of the application.

DATED and DELIVERED at NAIROBI this 30th day of November 2015.

A.O. MUCHELULE

JUDGE