



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Succession Cause 10 of 2001

IN THE MATTER OF THE ESTATE OF M'MWIRICHIA MUTHURI (DECEASED)

M'MIRAKI M'MWIRICHIA PETITIONER

VERSUS

M'TUAMIKWA MWIRICHIA 1ST RESPONDENT

KINGORI M'MWIRICHIA 2ND RESPONDENT

KAUME M'MWIRICHIA 3RD RESPONDENT

THAINE M'MWIRICHIA 4TH RESPONDENT

M'MAINGI M'MWIRICHIA 5TH RESPONDENT

GICHUNGE M'MWIRICHIA 6TH RESPONDENT

RULING

The petition for grant of letters of administration in this matter was filed by M'Amiraki M'Mwirichia on 10th January 2001. Grant has not been issued and it is not clear whether the petition was ever gazetted. Despite that, the petitioner filed an application seeking to stop his brothers from intermeddling with the deceased property being *F/NO 1865 Kianjai Adjudication Section*. This court granted an order to stop intermeddling with that property. From the reading of the affidavits of the persons restrained, it does look like the petitioner was stopping the demarcation of the boundaries of the deceased property being determined by the District Surveyor. The parties have thereafter engaged in applications against each other and finally for consideration by this court is the Chamber Summons dated 24th June 2009. That application is brought by the brothers of the petitioner. The affidavit in support of that application is sworn by M'Tumikwa Mwirichia. The application seeks the order that the parcel number *Kianjai/Adjudication section No. 1865* be reinstated to the registration particulars as they were as at 1988 when the deceased died. The deponent of the affidavit stated that the deceased property was shared out amongst his beneficiaries after the death of the deceased without this court having authorized such sharing through a confirmed grant. It is not disputed by the petitioner that a letter was written by the deceased on 9th January 1985 where he requested the said parcel of land be distributed to certain beneficiaries. That letter was addressed to the adjudication officer Tigania Division Urru. At the back of that letter, there is indication that the adjudication officer acted on the

instructions of the deceased on 19th June 1990. The deceased died on 19th December 1988. It is therefore very obvious that the adjudication officer dealt with the deceased property after the death of the deceased. As stated before, to date, there is no grant issued by the court in respect of this estate. There is no doubt that the adjudication officer in dividing the deceased property acted against the tenets of section 45 (1) of the Law of Succession Act.

That Section provides as follows:-

“45. (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

In view of the contravention of the law relating to the deceased estate, as shown above, the court can trace the property of the deceased even though transferred to other persons. Indeed, this court has power to order the reversal of the adjudication officer's actions. A case in point is Jane Gachoki Gathecha Vs. Priscilla Nyawira Gitungu & Ano. Civil Appeal No. 343 of 2002 where the Court of Appeal dealt with the case where the respondent in that appeal had fraudulently obtained a confirmed grant and had proceeded to use that grant to transfer the deceased property to third parties. The Court of Appeal found that those transfers could be traced. The court in that case stated thus:-

““We think, with respect, that there is a fallacy in invoking and applying the provisions of Section 93 (1) of the Law Succession Act and the superior court fell into error in reliance of it. The section would only be applicable where, firstly, there is a “transfer of any interest in immoveable or moveable property.” Kabitatu had no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.”

The application therefore is merited. It is necessary to reinstate the deceased property into the state that it was at the time of his death to await this court to authorize distribution as per law. I grant the following orders:-

- 1. An order is hereby issued directed to the adjudication officer ordering him to reinstate the registration and ownership of parcel number Kianjai/Adjudication Section No. 1865 as it was as at 1988 and to reflect the name of M'Mwirichia Muthuri, deceased.***
- 2. The costs of the Chamber Summons dated 24th June 2009 shall be in cause.***

Dated and delivered at Meru this 2nd day of July 2010.

MARY KASANGO
JUDGE