



REPUBLIC OF KENYA



In re Estate of Itirithia Mbogari alias M'Itirithia M'Mboroki (Deceased) (Succession Cause 280 of 2006) [2025] KEHC 2220 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 280 OF 2006
EM MURIITHI, J
FEBRUARY 13, 2025
IN THE MATTER OF THE ESTATE OF ITIRITHIA
MBOGARI ALIAS M'ITIRITHIA M'MBOROKI (DECEASED)**

BETWEEN

LYDIA MWARANIA ADMINISTRATOR

AND

MIRIAM NJINE ADMINISTRATRIX

RULING

1. By Chamber Summons under certificate of urgency dated August 9, 2024 pursuant to Section 47 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules and Section 80 of the Land Registration Act, the Applicant seeks that:
 1. Spent
 2. The title deed issued to Alois Simbumbu Murira be cancelled and the register for land parcel number Ntima/igoki/235 be rectified by cancelling the registration of Alois Simbumbu Murira as the proprietor and any other subsequent transfers and ownership thereof to revert in the name of Itirithia Mbogari (Deceased herein).
 3. Costs of this application be borne by the 2nd Administratrix/Respondent.
2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by the Applicant on even date. She avers that pursuant to the issuance of a confirmed grant on 30/5/2019, the estate property was subsequently subdivided by the County Surveyor and each beneficiary shown their respective portions. On 23/5/2024, the court ordered the lifting of any encumbrances affecting the estate property to enable the implementation of the grant. It has been discovered that the estate property was registered in the name of Alois Simbumbu Murira on 1/9/2017 and a trustee title



deed issued to him on 4/9/2017. The said Alois Simbumbu Murira was the original objector in this matter and was substituted by his wife, the 2nd Administratrix herein. The said registration was done fraudulently on the basis of an alleged succession cause No. 156/2019 which is non-existent and the available file at Meru Probate and Administration registry relates to a different deceased person. In any event, a 2nd succession in respect of the same deceased person could not have been instituted in 2015 while this cause was pending in court. The confirmed grant cannot be implemented without a rectification of the register and cancellation of the said fraudulent title deed.

3. The Respondent opposed the application by her replying affidavit sworn on 5/11/2024. She urges the court to dismiss the application in its entirety and refer the matter to the Environment and Land Court. The transfer of the estate property was effected by her late husband during his lifetime and no documentary evidence has been adduced to show that the process was tainted with fraud and/or illegalities. She accuses the Applicant of excessively delaying in filing the application, and besides, the application ought to be made in Meru Succession Cause No. 156 of 2019 to enable the parties ventilate their objections therein. She prays for the dismissal of the application for having been made in the wrong forum on mere fabrications and unsubstantiated allegations.

Analysis and Determination

4. The issue for determination is whether the application is merited.
5. The question of the application being before the wrong forum does not arise, because the orders the Applicant is seeking are facilitative, as distinguished from adjudicatory, in nature, and therefore within the jurisdictional ambit of a Succession Court. The Applicant is challenging the authenticity and legitimacy of the succession proceedings in cause No. 156/2015 which bestowed Alois Simbumbu Murira with authority to effect transfer of the estate property to his name. Therefore, this court has the requisite jurisdiction to probe the legality of those proceedings and the incidental orders ensuing therefrom.
6. The copy of the green card on record shows that the deceased herein was registered as the proprietor of the estate property on 17/6/1970. What the Applicant challenges is how the estate property was subsequently registered in the name of Alois Simbumbu Murira on 1/9/2017 and a title deed issued on 4/9/2017. It is captured on the green card that the said transfer was effectuated on the strength of a grant issued in Succession Cause No. 156 of 2015. That registration of the estate property and the subsequent transfer hereof to Alois Simbumbu Murira is now being challenged as being fraudulent because it was predicated on a non-existent cause.
7. In order to render substantive justice to the parties, it is incumbent for the court to peruse the said cause to ascertain whether the same is not only existent but also relates to the deceased herein. Only then can the court reach a just conclusion on the fraudulent nature or otherwise of the transfer to Alois Simbumbu Murira.
8. Evidently, there is no record of Meru Chief Magistrate's Court Succession Cause No. 156 of 2015 while Meru Chief Magistrate's Court Succession Cause No. 156 of 2019 was in respect of the estate of Stephen M'Munyua M'Itaru Alias M'Munyua M'Itaru. It is clear that the said Stephen M'Munyua M'Itaru is a distinctly different person from the deceased herein, and there is evidence to the contrary.
9. The record shows that Alois Igwetwa Simbumbu Murira and the Applicant were grandchildren to the deceased, and a temporary grant of letters of administration was jointly issued to them on 25/7/2016. In her summons for confirmation of grant dated 29/11/2016, the Applicant proposed that the estate property should be shared equally between the two of them. That proposal was met with a lot of



resistance by Alois Simbumbu Murira, where at paragraph 7 of his affidavit of protest dated 23/3/2017, he urged that he was solely entitled to the estate property in its entirety.

10. In its judgment dated 6/12/2018, the Court (F. Gikonyo J) ruled that:

“The oral will claim is out of the way. The evidence show that these two families live in the estate property. The law is that the heirs of the deceased beneficiary will take the share of their deceased parent in equal shares. This is the principle enunciated in section 38 of the Law of Succession Act. Accordingly, I order that the estate herein shall be shared equally between the family of late Daniel Kiogora, and Alois Murira. As Daniel is deceased, his wife Lydia Mwarania shall hold the share of Daniel Kiogora for her own benefit and that of her children in equal shares. The subdivision shall however take into consideration existing houses or homesteads by the two families. The grant is confirmed in the foregoing terms....”

11. To give effect to the decision of the court of 23/5/2024, the court deems it prudent to invoke its jurisdiction under section 80 of the Land Registration Act by ordering the rectification of the register and cancellation of the title deed issued to Alois Simbumbu Murira, so that the estate property can revert to the name of the deceased. The parties will thereafter proceed to share the estate property equally between them, as decreed by the court on 6/12/2018.

Orders

12. Accordingly, for the reasons set out above, this court finds that the application dated 9/8/2024 is merited and it is allowed in terms of Prayer No. 2 thereof in the following terms:

1. The register for land parcel number Ntima/igoki/235 shall be henceforth rectified by cancelling the registration of Alois Simbumbu Murira as the proprietor and any other subsequent transfers and ownership thereof, so that the same reverts in the name of deceased herein, Itirithia Mbogari.
2. The estate property to wit Ntima/igoki/235 shall be shared equally between the Applicant and Alois Simbumbu Murira, in accordance with the decision of the court dated 6/12/2018.

Order accordingly.

DATED AND DELIVERED THIS 13TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Batista Mwirigi Advocate for 2nd Administratrix/Respondent.

