



**In re Estate of Stanley Imathiu Kibariki alias Mathiu Itonga alias Mathiu Kibariki (Deceased)  
(Succession Cause 152B of 2000) [2024] KEHC 48 (KLR) (10 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 48 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 152B OF 2000  
EM MURIITHI, J  
JANUARY 10, 2024**

**IN THE MATTER OF THE ESTATE OF STANLEY IMATHIU KIBARIKI  
ALIAS MATHIU ITONGA ALIAS MATHIU KIBARIKI (DECEASED)**

**BETWEEN**

**MOSES GATOBU IMATHIU ..... ADMINISTRATOR**

**AND**

**LUCY KANINI MATHIU ..... OBJECTOR**

**JUDGMENT**

1. By Chamber Summons dated 14/10/2021 under sections 45, 47 and 76 of the *Law of Succession Act*, Rules 27, 44, 49 and 73 of the *Probate and Administration Rules*, and Article 159 (d) of the *Constitution*, the applicant seeks that, “The Honorable Court be pleased to issue an order for revocation and/or annulment of certificate of confirmation of the grant issued herein on 12<sup>th</sup> July 2004.”
2. The application is premised on the grounds on the face of it and supporting affidavit of the applicant sworn on even date. She avers that the grant herein was confirmed through concealment of material facts and her interests were not taken care of since the administrator left out all the daughters of the deceased while distributing the said estate. Since the administrator has refused to distribute the estate in accordance with the wishes of the deceased, it is only right that the orders herein be issued for proper distribution of the deceased’s estate and no party shall be prejudiced if the orders sought are granted.
3. The applicant swore a supplementary affidavit on 30/5/2022 in support of her application.
4. The respondent opposed the application vide his replying affidavit sworn on 25/2/2022. He contends that the application is riddled with falsehoods, lies, misrepresentation of facts and failure to disclose material facts, as the applicant had knowledge of the whole process since she was an employee of the Judiciary based at Meru Law Courts. They sat as a family and agreed on how to initiate the process



and the applicant being an employee of the Judiciary assisted them in doing so. Although the deceased herein was a polygamist with 2 homes, all his children were in the know when the cause was lodged and when the estate was distributed. The applicant got 0.50 Acres which she sold to Joseph Mwebia Mathiu. The applicant is being driven by malice and hatred over a family disagreement and now claims concealment of material facts when she was the actual driver of the succession process. The whole family has lived in peace for over 20 years since the death of the deceased and all the other daughters of the deceased are against the disturbance of the prevailing status.

5. Dorcas Nyoroka Muguna, Naomi Kajuju Mworira, Eunice Nkatha Gichuru, Mary Gacheri Gitonga, Lilian Kanyiri Nkonge, Susan Nguta Bundi, Jane Kanja Mbaabu, Lydiah Ngautani Mathiu and Doris Kigetui Mathiu, the daughters of the deceased, swore an affidavit on 25/2/2022 in opposition to the application. They aver that the applicant sold her share to Joseph Mwebia Mathiu at Ksh. 100,000/- and the same was merged with the share due to Joseph Mwebia Mathiu during distribution. The applicant used the proceeds of sale to purchase 2 Acres of land at Subuiga which she still has. The applicant has a petty grudge against the step brothers which is not right for the family well being. As a matter of fact, all the daughters of the deceased denounced their interests in the estate save for the applicant who took her share and disposed the same and ought not to cry for justice.
6. Joseph Mwebia Mathiu and Paul Murithi Mathiu, the sons of the deceased herein, swore an affidavit on 25/2/2022 in opposition to the application.

### Evidence

7. The applicant Lucy Kanini Mathiu testified as Objector's witness NO. 1 (OW1) and said: "I am the 3<sup>rd</sup> child of the deceased. I seek to inherit my father's estate. I had a portion on the estate and we were cultivating with my sister. My brother stopped me. This is in 2017. I followed up on the matter and established that the succession was filed without including us on the application. We had a family meeting which I should have got 1.5 acres. We even went to the chief and I got a letter. There are two families. We had agreed that each widow takes 1.5 acres for the daughters who did not marry. I have filed 3 Affidavits one of 14/10/2021, 19/7/2022 and 30/5/2022. I wish to rely on the affidavits."
8. On cross examination, she stated that, "I wish the court to revoke the grant issued in 2004. It is about 19 years. I was working in 2004 and I retired in 2019. I worked in Meru, Maua and Nkubu. I retired in 2019 while working in Meru. In 2004 I was working in Meru. Are you the driver of the process of succession? We started with Meru. We sat down 6 people. I was staying within Meru. We were talking about this estate. I knew about the matter when it was starting. The process started in 2000. I know about the process in 2000. I knew about the process in 2000. I did not know how the estate was shared. I have seen the response by my brothers and sisters. I did not sell any property to any brother. If the grant is revoked, what shall you achieve? I am following upon my share. The estate shall be shared afresh. Why didn't you apply for provision in the estate? I am not an Advocate. I did know how to apply. Who told you to move out? It was Joseph Murethia Mwebia. I have not sued him as an interested party. He is not the Administrator. I sued the Administrator. The titles were issued a long time. I was working there. I did not bring the matter to court as I thought they would say I was using my position at Meru. I went to the Chief to be given permission to cut posts to fence my *shamba*. Why did you go to the Chief? I had been chased away and I had asked him to give me posts. He refused. I went to the chief. I saw response from my sisters. They are all married. They said you are disturbing? I was given a share and sold to my brother? It is not mine. [Affidavit of Paul Muriithi and Joseph Mwebia. Paragraph 8 & 9]. You bought a parcel of land at Subuiga? I not seen any evidence indicating that I got a share. You said you did want to stay with the brothers? There is nothing like that. In 2004 I established that the land had been sub-divided accordingly to the grant in court. They have permanently developed their plots.



There is a portion which remains. From which land in particular? From all the 3 of them. Each can surrender a portion of their share. Our mothers were not provided. We had said that 1.5 acres for each. They did not get any share. One passed away. The other is very old. She has not made an application for herself. She is sick. My mother stays with Moses Gatobu and Muriithi Paul. [Application not made in good faith]. That is not true. At the moment I stay at Subuiga. That is where I have built my home. I didn't buy the land for proceeds of sale of my share to my father.”

9. On re-examination, she stated that, “I bought the *shamba* in 2014. My *shamba* is 2 acres. It could not be bought by the alleged Kshs 100,000/= that I allegedly got for Mr. Joseph Mwebia.”
10. PW1 Moses Gatobu Imathiu and the respondent herein adopted affidavits of 19/9/2022, 2/3/2022, 28/2/2022 and 25/2/2022 as evidence in chief.
11. On cross examination, he stated that, “The 0.5 acres that we gave you is from the deceased estate. The parcel of land is 12:00 acres. It is then that my mother got 1.5 acres. Your mother also got 1.5 acres. This share was on behalf of daughters it is not specific to the married daughters only. My mother's sat and agreed how to share. You were given ½ acre for her mother. Your brother Joseph Mwebia was given 1 acre to hold for the sister. Your mother has 6 daughters. All of them are married. Including yourself. You have 3 children. According to the agreement when we sat the 6 of us, you were there at the meeting. We agreed that as our father had given you a plot. We considered you because you told us that our father had given you a plot. We were close to you. Each mother was given 1.5 Acres for the sisters who may come back home. Mwebia was given 1 acres. We gave you 0.5 acres. You are the one who went for a surveyor. You agreed with Mwebia that your share should go to Mwebia. I confirmed this from you when Mwebia told me. Mwebia bought the share of the ½ acre for 100,000/=. You did not ask for any share for 20 years. Who is the witness from inside? You told me to tell the surveyor to include her share with Mr. Mwebia's share. I did not give you the ½ acres. I knew you sold to Mwebia. We trusted each other. You are lying. It is not true that we denied you your share of the estate.”
12. On re-examination, he stated that, “Why was Kanini not given a share? I told the court that when we went as 6 people, we agreed that as there could be sisters who come back home after marriage, 1½ acre would go to each household. The ½ acre from Karimi is given and Mwebia was to get 1 acre to hold for the other sisters. Karimi was fencing on Mwebi's share of land, she was not fencing on my *shamba*. She sold a share to her brother Mwebia. Karimi is the one who paid for the stranger. Surveyor is the one who was following up on the succession proceedings. I was only following up on which she advised. In Kanini's household. They are 6 sisters. They are all married. Kanini is married. She does not live at home.”
13. PW2 Joseph Mwebia Mathiu testified that, “I am retired KDF officer. I retired in 2020. The deceased is my father. Paul Muriithi is my step brother and Lucy Kanini is my sister same father mother. I know the application before the court is revocation. I rely on affidavit we jointly made with Paul Muriithi of 25/2/2022.”
14. On cross examination, he stated that, “I gave you 100,000/- when? I gave you in 2000 before the *shamba* was distributed in 2004. All my brothers and sisters know about it. September 2021 – Why did you come to my home? I used to ask to get the case from court to settle the matter at home. You had given back 100,000/= so that I would give back the land. You had put the money in my account. I had brought the money back in September 2021. You said did not wish to get the *shamba* and you requested for 100,000/=. I do not know whether you added money to buy land at Subuiga. We are 6 sisters in my mother's house. The share was for all six 1½ acres. In my stepmother's house they are 5 daughters. We give each widow 1½ acres. When we sat as 6 we said that since we were 6 in my mother's house. We agreed that our mother would give ½ share to Lucy and 1 acre was given to hold for others



as Lucy as she told our mother that she was not married. Lucy said she did not wish to get the *shamba* and I paid her Kshs 100,000/=. She utilized my *shamba*. When I retired I asked for the land and she refused. All my sisters have told her that she is wrong. 9 sisters have sworn affidavits in support of our case. The ½ portion was paid Kshs 100,000/=. It is truth. She worked at the court and she said she had experience with court proceedings. You started in 2017. It is that true that 1½ acres was to go to 5 daughters on each house. The only other sister who objected is Nancy Karoki. She did not sign the affidavit of the daughters. It is not true that we have denied you of your share.”

15. On re-examination, he stated that, “Nancy Karoki who is before the court supports Kanini but she has not shown any affidavit. Our step mother has not filed any application or Affidavit asking that the grant be revoked. I bought the *shamba* in 2000. Where we went to survey the land. We had the grant of the court. It was in 2004. We had agreed at home before the succession. The applicant is the one who brought the surveyor. She is the one who was following up the succession. I had asked my sister to represent the house as I was in KDF. On the other side, Moses the Administrator represent the other house. When the grant was passed, it was Kanini who brought the grant to us. The money was put in my account. At this time I already had the title. She said she has changed her mind and wanted to get a land back. I went to the applicant with my sister Naomi Kajuju. We withdrew the money and took it to Lucy and told her that we would be selling the land back. In 2000 when I spoke with her I gave her 100,000/=. She said she was going to buy a *shamba* at Subuiga. I do not know whether at time the money was enough to buy the land. 1½ Acres that she should have been considered as a sum. My mother gave Lucy ½ acre alone and I was told to hold 1 acre for the other 5 in case any left marriage. [The *shamba* she used all the time] she has lied when title for 4½ I used ½ share, she has actually 3 acres from my *shamba*. I had allowed her to cultivate. Kanini has Subuiga and Koonje. She is married. She has 3 children. We know the children father.”

### Submissions

16. By Submissions dated 7/7/2023, the applicant urged that she was not included in the succession process thus the grant ought to be revoked, and cited *Re Estate of Prisca Ong'ayo Nande (Deceased)* (2020) eKLR. She urged that the mode of distribution was discriminative as it offended the *Constitution*, and cited *Re Estate of M'Mugwika M'Maitethia* (Deceased) (2018) eKLR.
17. The respondent's counsel by Submissions dated 17/8/2023 urged that the revocation is driven by malice and hatred and ought to be declined as the court is not in the business of settling family scores. He prayed the court to dismiss the application with costs.

### Analysis and Determination

18. The issue for determination is whether the grant should be revoked.
19. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:-
76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
- (a) that the proceedings to obtain the grant were defective in substance;
  - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
  - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance



or inadvertently; (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
- (ii) to proceed diligently with the administration of the estate; or
- (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or (e) that the grant has become useless and inoperative through subsequent circumstances.”

20. The applicant is listed as a daughter to the deceased in the chief’s letter dated 8/6/2000. Although the applicant insists that the cause was filed without her knowledge, she admitted in cross examination that she knew of the succession proceedings from the start:

“...I knew about the matter when it was starting. The process started in 2000. I know about the process in 2000. I knew about the process in 2000. I did not know how the estate was shared....”

21. On a balance of probability, the court also accepts the testimony of the respondents through PW2 Joseph Mwebia Mathiu that the applicant who worked as an officer at the Meru Law Court was the one who had the experience in court matter and she helped in the filing and progression of the matter before the court and, therefore, all the time aware of the proceedings.

22. PW1 and PW2 both affirmed that the applicant had in fact sold her share of the estate to PW2 for a consideration of Ksh.100,000. Their testimony is buttressed by the averments contained in the affidavit sworn by all the other daughters of the deceased herein.

### **Conclusion**

23. It is apparent from the foregoing that the applicant indeed knew of the existence of these proceedings. On the evidence, this court is persuaded that it is more likely than not that the applicant sold her share of the estate to Joseph Mwebia, and used the proceeds therefrom to purchase another parcel of land at Subuiga where she currently resides.

24. Moreover, the grant sought to be revoked was confirmed way back on 5/6/2001 while the instant application was filed on 25/10/2021. This court also finds that the applicant has inordinately delayed in bringing the application.

### **Orders**

25. Accordingly, for the reasons set out above, the court finds that the Applicant’s application dated 14/10/2021 is without merit and it is dismissed.

26. Each party shall bear its own costs.

Order accordingly.

**DATED AND DELIVERED ON THIS 10<sup>TH</sup> DAY OF JANUARY, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**



Appearances

Ms. Kimotho, Advocate for the Petitioner/Respondent.

