



**In re Estate of Rukwaru Ithiria (Deceased) (Succession Cause  
1 of 1994) [2024] KEHC 1394 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1394 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 1 OF 1994  
EM MURIITHI, J  
FEBRUARY 15, 2024**

**BETWEEN**

**MARGARET NKIROTE MATHIU ..... 1<sup>ST</sup> APPLICANT  
CHARITY NAITORE MATHIU ..... 2<sup>ND</sup> APPLICANT  
ANGELICA KENDI MATHIU ..... 3<sup>RD</sup> APPLICANT  
CHRISTINE GAKII ..... 4<sup>TH</sup> APPLICANT  
ELIZABETH KAGWIRIA ..... 5<sup>TH</sup> APPLICANT  
WINFRED GATWIRI ..... 6<sup>TH</sup> APPLICANT**

**AND**

**ALICE NJIRU KIJUKI ..... RESPONDENT**

**RULING**

1. The applicants chamber summons dated 16/2/2023 under section 76 of the [Law of Succession Act](#), seek that the grant of letters of administration of the estate of the deceased made to Alice Njiru Kijuki on 26<sup>th</sup> May, 2014 be revoked.
2. The application is premised on the grounds that the proceedings to obtain the grant were defective in substance. It is averred that the grant was obtained by means of an untrue allegation of a fact essential in law to justify the grant. It is further averred that the grant was obtained fraudulently by the making of a false statement and concealment from the court of the applicants' interest in the estate of the deceased.
3. The applicants urge that this cause was secretly filing without their involvement with a view of disinheriting them, and pray for the revocation of the grant to pave way for fair and appropriate distribution of the estate.



4. The respondent opposed the application vide replying and further replying affidavits sworn on 6/3/2023 and 14/3/2023. She avers that the applicants are daughters to Samuel Mathiu Rukwaru (deceased) who was a son to the deceased. The applicants' father bequeathed his share of the estate to his two sons namely Moses Mwirigi Mathiu and Benson Kirimi Mathiu (now deceased), in the presence of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> applicants and their deceased sister Martha Kanja Mathiu. The applicants cannot claim to be unaware of the said position and wishes of their deceased father, which were respected during distribution. The applicants have never lived on the property meant for their father, as the same is exclusively occupied, developed and used by their 2 brothers. The deceased bequeathed LR No Abothuguchi/Katheri/468 to his 3 sons (now deceased) equally, who subsequently distributed to their respective sons as per their wishes. Everything was done in accordance with the agreement of the entire family which involved even the applicants who are falsely claiming they were not aware. It is unfair and inequitable for the distribution as done to be disturbed since each beneficiary has settled on his entitlement openly for over 20 years. The applicants were married and well settled in their families away from the estate, and thus the application has been brought in bad faith. The  $\frac{1}{3}$  portion of LR Abothuguchi/Katheri/468 going to Nathan M'Magiri M'Rukwaru was given to Julius Gituma Kirigia to hold in trust for himself and his siblings considering the previous allocation of LR Abothuguchi/Katheri/2235. If need arises, she shall request to bring clan elders as witnesses to confirm these facts. The deceased allocated land parcel No Ontulili/Ontulili (Katheri)/189 to Robert Mutwiri Mathiu who is son to his 1<sup>st</sup> wife and Kaimenyi Mathiu, Monica Kinanu Mathiu and Mpinda Mathiu who are children of the 2<sup>nd</sup> wife, and no one has ever had any problem with that distribution. The applicants have at all times been aware of this petition since 1994 when it was filed and their application is highly suspect and an afterthought, which ought to be disallowed so that the matter can rest.

### **Submissions**

5. The applicants maintained that they have amply demonstrated that the proceedings herein were initiated without their knowledge and consent, and they were not involved in the distribution of the estate, thus necessitating the revocation of the grant. They urged the court to find that the distribution of the estate of the deceased was discriminatory and illegal, and cited *Estate of Pius Tembete Kwayiyya* [2020] eKLR.
6. The respondent urged the 3 resultant subdivisions of LR No Abothuguchi/Katheri/301 being Abothuguchi/Katheri/2235, 2236 and 2237 were to go to the 3 sons of the deceased. She urged that the applicants have been aware of the proceedings herein from inception in 1994. She urged that the applicants were exclusively and absolutely allocated LR No Ntarami/Thau/339 at Tigania measuring 2½ acres. She urged that the applicants have not fully convinced the court that there is reasonable ground to revoke the grant.

### **Analysis and Determination**

7. The issue for determination is whether the grant should be revoked.
8. 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.”

9. Whereas the applicants contend that this cause was filed secretly without their involvement with a view of disinheriting them, the respondent contends that the applicants were fully aware of these proceedings and their father, Samuel Mathiu Rukwaru (now deceased) bequeathed his share of the estate to his two sons namely Moses Mwirigi Mathiu and Benson Kirimi Mathiu.
10. The beneficiaries listed in the introductory letter of the chief are Elizabeth Ncece M'Rukwaru - widow, M'Magiri M'Rukwaru - son, Mathiu M'Rukwaru-son, M'Mbwiria M'Rukwaru - son and Stanley Kijuki M'Rukwaru - son.
11. The initial petitioner, M'Magiri M'Rukwaru (now deceased) testified in court on 18/12/1995 that, “I am the eldest son of the deceased. Prior to his death the deceased shared out the land to his sons. His land which was five acres was sub-divided and distributed. He had another land which he did not share. These are the titles that he got. They are in the name of the deceased. I got the necessary consents and letter from the Chief. The matter was published in the gazette. All family members including the objector were in court when grant was made. No objection was raised. My role is only to transfer the lands to my brothers as sub-division had been done by my father. The portion left was only 3 acres which deceased did not distribute. I want to distribute that also to my brother equally. My brothers are in occupation of their respective portions. There are coffee trees and yams on these portions.”
12. On cross examination by counsel for Stanley M'Muthuri M'Rukwaru and Mathiu M'Rukwaru, the objectors, he stated that, “My late father had 4 sons. He had 8 acres of land. The first parcel No 31 was sub-divided by my father. I also know parcel No 468. I obtained consent from my brother. We had built on parcel No 301 before sub-division. We all had equal shares. I did not include parcel No 468



- on the list of assets of my late father. It is because of my other brother. Parcel No 468 belong to the deceased. We are all cultivating on it. I have a house there too.”
13. On re-examination, he stated that, “The other brother I did not include is living in Lamu. My late father denied him a share in parcel No 301. I intend to share parcel No 468 amongst us all. My parcel is now 2225 from original parcel No 301. It was only an error that I did not include a parcel No 468.”
  14. Stanley M'Rukwaru, the 2<sup>nd</sup> objector testified that, “I am son of the deceased. We are 4 sons. The petitioner did not consult me. I came to know about it in court. I am dissatisfied with the succession and sub-division. I do not know how sub-division has been done. I have a house in parcel No 301. I just farm in parcel No 468. Our father showed us the boundaries. I pray for court to order a survey of the land, and costs.”
  15. On cross examination by counsel for the petitioner, he stated that, “My father did not sub-divide the land. He showed us the respective boundaries and I planted yams along the boundaries. My father showed us where to build. Nobody has trespassed. Even parcel No 468 is divided among us and we are farming it all. I was aware of the consent forms signed by my other brother. I do not know if my father surveyed the land before sub-division. I was satisfied with my father's distribution.”
  16. In its judgment of 20/12/1995, the Court rendered thus, “Parcel No 468 belongs to the deceased and rightly forms part of his estate. The administrator conceded it was omitted by error from the list of assets submitted. The said parcel be shared equitably amongst the 4 sons of the deceased. As parcel No 301 had been subdivided by the deceased in his lifetime, it cannot be interfered with it. The boundaries shown to the heirs by the deceased must be respected and distribution carried out as he willed. The objector only prayed for a court order to survey the land. This is a matter that the administrator can do if it is the wish of the heirs to do so, and he does not need a court order for that.”
  17. All the parties herein are in agreement that the applicants' father, Samuel Mathiu Rukwaru (now deceased) was entitled to LR No Abothuguchi/Katheri/2237 and  $\frac{1}{3}$  of LR Abothuguchi/Katheri/468. According to the rectified certificate of confirmation of grant dated 26/5/2014, LR No Abothuguchi/Katheri/2237 and  $\frac{1}{3}$  of LR Abothuguchi/Katheri/468 were given to Moses Mwirigi Mathiu and Samwel Murithi Murimi.
  18. This court finds that the respondent has proved on a balance of probabilities that the applicants' deceased father had given his entitlement in the deceased's estate to his 2 sons, subsequent to which the grant was confirmed.
  19. The grant sought to be revoked was confirmed way back on 26/5/2014 while the instant application was filed on 16/2/2023. That delay of approximately 9 years is inordinate. This court finds that the applicants have not met the threshold laid down under section 76 of the [Law of Succession Act](#) to justify grant of the orders sought.
  20. Besides, the fact that applicants are grand-children of the deceased negated their claim on need to be notified and/or involved when the cause was filed, since their father, who was a direct beneficiary of the deceased, was then alive and in prior degree of priority on consanguinity table under section 66 of the [Law of Succession Act](#).

## Orders

21. Accordingly, for the reasons set out above, the Court finds that the application for revocation of Grant dated 16/2/2023 is without merit and it is dismissed.
22. There shall be no order as to costs.



Order accordingly.

**DATED AND DELIVERED THIS 15TH DAY OF FEBRUARY, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Gatari Ringera for the Applicant.

Mr. Gikunda Anampiu for the Respondent.

