



**In re Estate of M’Muthuri Riuba alias Muthuri Riuba (Deceased) (Succession Cause 559A of 2013) [2024] KEHC 3358 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3358 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 559A OF 2013  
TW CHERERE, J  
MARCH 14, 2024**

**IN THE MATTER OF THE ESTATE OF M’MUTHURI RIUBA ALIAS  
MUTHURI RIUBA (DECEASED)**

**BETWEEN**

**MOSES KIAUTHA M’MUTHURI ..... 1<sup>ST</sup> PETITIONER  
SAMWEL CHABARI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ISABELLA KAJATHI M’MUTHURI ..... 1<sup>ST</sup> PROTESTOR  
JOSEPH MURORI MUTHURI ..... 2<sup>ND</sup> PROTESTOR**

**RULING**

1. By summons dated 23<sup>rd</sup> October, 2023, Protestors/Applicants seek the following orders:
  1. ....spent
  2. ....spent
  3. That the Honourable Court be pleased to revoke the grant of letters of administration intestate issued to Moses Kiautha M’Muthuri and Samwel Chabari and confirmed on 20<sup>th</sup> December, 2018
  4. That the Honourable court be pleased to appoint Isabella Kajathi M’Muthuri and Joseph Murori Muthuri as administrators of Deceased’s estate
  5. That the Honourable court be pleased to rectify the grant to have Kaguma Market Plot No. 47B (20x80) distributed to Isabella Kajathi M’Muthuri and Joseph Murori Muthuri
2. The summons is based on grounds among others that:



1. Petitioners/Respondents have not distributed the estate
  2. That the 2<sup>nd</sup> and 3<sup>rd</sup> houses were awarded plots Kaguma Market Plot No. 47B (20x80) and Kaguma Market Plot No. 4 (40x80) whereas the children of the 1<sup>st</sup> house got no plot
  3. That Protestors/Applicants have discovered that Moses Kiautha M’Muthuri and Francis Mathei M’Muthuri who are children of the 2<sup>nd</sup> house sold deceased’s Plot No. 176 Section 1 M.N.Kisauni and that the 2<sup>nd</sup> house is therefore not entitled to another plot
3. The summons is also supported by an affidavit sworn by Isabella Kajathi M’Muthuri and Joseph Murori Muthuri (1<sup>st</sup> and 2<sup>nd</sup> Protestor/Applicants respectively) 23<sup>rd</sup> October, 2023 in which the grounds on the face of the application are reiterated.
  4. Annexed to the affidavit is a Certificate of Confirmation of Grant dated 20<sup>th</sup> December, 2018, two notes relating to Plot No. 176 Section 1 M.N.Kisauni and sale agreement of the said plot dated 03<sup>rd</sup> August, 2001 executed by the vendors Moses Kiautha M’Muthuri and Francis Mathei M’Muthuri and the purchaser one Mohamed Ahmed Mohamed which reveals that the plot was sold for KES. 400,000/-.
  5. By his replying affidavit sworn on 23<sup>rd</sup> November, 2023, Moses Kiautha M’Muthuri the 1<sup>st</sup> Petitioner/ Respondent opposed the summons mainly on the ground that the delay in distributing the estate is attributable to the Protestors/Applicants who have declined to pay their share of survey fees. He additionally avers that the consent that led to the distribution of the estate, which was signed by all beneficiaries among them the Protestors/Applicants contains a clause that the 1<sup>st</sup> Protestor/Applicant was to receive KES. 200,000/- from the proceeds of sale of Plot No. 176 Section 1 M.N.Kisauni which has been paid as a benefit to the 1<sup>st</sup> house. Annexed to the affidavit is the consent dated 21<sup>st</sup> November, 2018.
  6. By supplementary affidavit sworn on 16<sup>th</sup> February, 2024, Protestors/Applicants deny that they have refused to pay survey fees. They also deny that the sum of KES. 200,000/- from the proceeds of sale of Plot No. 176 Section 1 M.N.Kisauni have been paid to the 1<sup>st</sup> Protestor/Applicant.

### **Analysis and Determination**

7. I have carefully considered the affidavit evidence on record and the issues for determination are as follows:
  1. Whether a case has been made for revocation of the grant of letters of administration intestate issued to Moses Kiautha M’Muthuri and Samwel Chabari and confirmed on 20<sup>th</sup> December, 2018
  2. Whether a case has been made for appointment of Isabella Kajathi M’Muthuri and Joseph Murori Muthuri as administrators of Deceased’s estate
  3. Whether a case has been made for rectification of the grant to have Kaguma Market Plot No. 47B (20x80) distributed to Isabella Kajathi M’Muthuri and Joseph Murori Muthuri
8. The provisions of Section 83 of the *Law of Succession Act* Cap concerning the duties of administrators was enunciated in *Re Estate of Wilfred Munene Ngumi (deceased)* [2020] eKLR where the court stated:

“Section 83(g) of the Act mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration



of the estate, and to produce to the court a full and accurate account of the complete administration....” .

9. By failing to transmit the estate to the beneficiaries, the Petitioners/ Respondents have acted contrary to the provisions of Section 83 (g) of the Act and this no doubt has prejudiced the beneficiaries who have a legitimate expectation to receive their share of the Deceased’s estate as ordered by the court.
10. Whereas there is no tangible evidence to demonstrate that Protestors/Applicants have declined to pay survey fees, the delay to distribute the estate cannot be wholly distributed to the Petitioners/ Respondents for there existed an error on the Certificate of Confirmation of Grant which the court by an order dated 29<sup>th</sup> November, 2023 ordered rectified.
11. I have perused the rectified grant dated 29<sup>th</sup> November, 2023 and I have noticed that the error concerning the description of LR. ABOTHUGUCHI/L.KAONGO/791 appears not to have been rectified and the court directs that the error be rectified to enable the Petitioners/Respondents fully distribute the estate without further delay.
12. From the foregoing therefore, I find that no case has been made for revocation of the grant of letters of administration intestate issued to Moses Kiautha M’Muthuri and Samwel Chabari and confirmed on 20<sup>th</sup> December, 2018 and for appointment of Isabella Kajathi M’Muthuri and Joseph Murori Muthuri as administrators of Deceased’s estate
13. Concerning distribution of Kaguma Market Plot No. 47B (20x80), Protestor/Applicants have not denied that they were party to the consent dated 21<sup>st</sup> November, 2018 by which the said plot was distributed jointly to Moses Kiautha M’Muthuri and Francis Mathei M’Muthuri.
14. A perusal of the court file reveals that the 1<sup>st</sup> Protestor/Applicant had previously by summons dated 08<sup>th</sup> February, 2019 sought to impeach the said consent order on the grounds that she was given a smaller share than the rest of the beneficiaries.
15. By a ruling dated 18<sup>th</sup> July, 2019, Gikonyo J had this to say concerning the said application:
  - (8) The beneficiaries herein recorded a consent dated 21<sup>st</sup> November, 2018 which was signed by seven of the dependents, being a representation of the three houses of the deceased
  - (9) The consent distributed the estate amongst the beneficiaries of the estate of the deceased. The consent was adopted by this honourable court and a certificate of Confirmation of Grant issued on 20<sup>th</sup> December,2018
  - {10} A keen look at the proceedings reveals that the Applicant herein was involved in the proceedings. She signed the initial consent for confirmation of grant dated 25<sup>th</sup> July, 2014. She was therefore familiar and well aware of the happenings in these proceedings.
16. The Court of appeal in the case of *William Koross (Legal personal Representative of Elijah C.A. Koross) v Hezekiah Kiptoo Komen & 4 others* [2015] eKLR addressed the issue of res judicata and stated as follows:

“The philosophy behind the principle of res judicata is that there has to be finality. Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives in. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.....”



17. In yet another case, the Court of Appeal in *Kenya Commercial Bank Limited v Benjob Amalgamated Limited* [2017] eKLR cited the decision in *Lal Chand v Radha Kishan*, AIR 1977 SC 789 where it was stated that;

“The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.

The practical effect of the res judicata doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such a suit.”

18. I fully associate myself with the foregoing holding by Gikonyo J as restated at paragraph 14 above. With respect, the issues concerning the distribution of the estate of the deceased and the implication of the consent dated 21<sup>st</sup> November, 2018, now raised by the Protestors/Applicants in the summons dated 23<sup>rd</sup> October, 2023 are res judicata for the reason that they have already been determined by a court of competent jurisdiction.

19. It is therefore hereby ordered as follows:

1. The summons dated 23<sup>rd</sup> October, 2023 has no merit and it is thus dismissed with costs to the Petitioners/Respondents.
2. A rectified Certificate of Grant shall issue in terms of the orders issued on 29<sup>th</sup> November, 2023
3. This cause will be mentioned on 19<sup>th</sup> September, 2024 to confirm full transmission of the estate

**Dated at Meru this 14<sup>th</sup> Day of March 2024**

**WAMAE. T. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Protestors/Applicants - Mr. Muriira for Steve Muriira & Co. Advocates

For Petitioners/Respondents- Ms. Gachohi for G.M.Wanjohi, Mutuma & Co. Advocates

