



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of M’guatu M’ithania (Deceased) (Succession Cause
401 of 1994) [2024] KEHC 4812 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 401 OF 1994
TW CHERERE, J
APRIL 18, 2024**

BETWEEN

CESERINA KAROKI M’GATU APPLICANT

AND

M’MWIRICHIA M’GUATU RESPONDENT

AND

JOSPHINE KAGIRI M’TURUCHIU INTERESTED PARTY

RULING

1. By judgment delivered on 16th December 2020, Gikonyo J, made a finding that the deceased had by an oral will bequeathed his entire estate comprised in LR.No. Kiirua/Naari-maite/505 to the Cecerina Karoki M’Guatu (2nd Administrator/Applicant) and her children.
2. A dispute having arisen concerning whether or not Josphine Kagiri M’Turuchiu (Interested Party) was entitled to ½ acre of the estate, the learned judge issued the following orders:
 - i. The ½ acre in Kiirua/Naari-maite/505 on which Josphine Kagiri lives and has developed is hereby set aside in accordance with rule 41 of the Probate and Administration Act, for the ownership tussle thereof between her and the personal representatives of the deceased to be determined in
 - ii. appropriate legal proceedings to be initiated by Josphine Kagiri within 30 days of today.
 - iii. That the balance of Kiirua/Naari-maite/505 after (i) above shall go to Cecerina and her children in equal share. I have noted Cecerina seems to discriminate against her own daughters.
 - iv. Accordingly, the grant is confirmed in the above terms



- v. This being a dispute involving close family members, each party shall bear own costs of the proceedings. It is so ordered.
3. Subsequently, a Certificate of Confirmation of Grant dated 15th March, 2021 was issued in terms of the court's orders referred to above.
 4. The record discloses that afterward, Josphine Kagiri M'Turuchiu (Interested party) filed MeruELC no.E003 of2021 as against the 1st and 2nd Administrators herein seeking to acquire ½ acre of Kiirua/Naari-maitei/505 by adverse possession which case she lost vide a judgment delivered by Yano J on 12th July, 2023.
 5. To date however, neither Cecerina Karoki M'Guatu (2nd Administrator/Applicant) nor M'Mwirichia M'Guatu (1st Administrator) have applied for rectification of the Certificate of Confirmation of Grant dated 15th March, 2021 to have the whole estate distributed to the 2nd Administrator/Applicant and her children.
 6. By summons dated 15th December,2023 the 2nd Administrator/Applicant seeks for the following orders: -
 - a. That the Honourable court be pleased to issue 2nd Administrator/Applicant with letters of administration intestate as per court order dated 30th October, 2019 and certificate of confirmed grant as per court judgement dated 16th November,2020
 - b. That the Honourable court be pleased to empower the 2nd Administrator/Applicant to solely execute all the necessary documents for distribution of deceased estate.
 - c. That the Honourable court be pleased to order cancellation of registration of inhibition registered on LR No. Kiirua/Naari-maitei/505 on 15th July, 2021.
 - d. That costs of this application be provided for.
 7. The application is grounded on the reasons that M'Mwirichia M'Guatu (1st administrator/ Respondent) has been hostile to the 2nd Administrator/Applicant and has declined to cooperate with the 2nd Administrator/Applicant to distribute the estate to her and her children. The application is also based on the ground that the Interested Party has caused to be registered a prohibition against LR No. Kiirua/Naari-maitei/505 on the basis that she is entitled to ½ acre of that land, although her claim had been dismissed by a judgment dated 12th July,2023.
 8. The Interested Party opposed the summons vide her replying affidavit dated 05th March,2024 wherein she avers that she is desirous of litigating the dismissal of her claim for ½ acre of the estate at the Court of Appeal and thus prays for time to be allowed to exhaust the judicial process in order to avoid losing her home of over 40 years.
 9. The 1st Administrator/Respondent similarly opposed the summons by way of a replying affidavit sworn on 05th March, 2024 in which he urges that the distribution of the ½ acre that the interested party claims be set aside pending the determination of her appeal.
 10. I have considered the summons in the light of the affidavits and annexures on record. I have also considered the previous orders made in this matter.
 11. The Interested Party pleads for time to appeal the dismissal order made on 12th July, 2023 and did file a notice of appeal on 18th July, 2023.



12. I have agonized over the appropriate orders would serve the interests of justice and I have found succor under Section 1A of the Civil Procedure Act which is applicable to this cause and which enshrines the overriding objective of the court as follows:
1. The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 2. The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
13. The principles that guide the court on the invocation of this rule were restated by Musinga, JA in the case of Equity Bank Limited v West Link Mbo Limited [2013] eKLR where the following observations were made: -
- “Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the confines of the law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from the Constitution or statute. Such power enables the judiciary to deliver on their Constitutional mandate.....Inherent power is therefore the natural or essential power conferred upon the Court irrespective of any conferment of discretion.”
14. From the totality of the material placed before the court, I find that both written and case law favours the invocation of the overriding objectives of the court to grant such other orders other than the orders sought in the summons dated 15th December, 2023 so that the competing rights and interests of all the parties in this matter can be balanced.
15. From the foregoing analysis, it is hereby ordered:
1. The ½ acre in Kiirua/Naari-maite/505 on which the Interested Party lives and has developed is hereby set aside in accordance with rule 41 of the Probate and Administration Act, pending the determination of the Interested Party’s intended appeal
 2. The balance of Kiirua/Naari-maite/505 after (1) above shall be distributed in equal shares as follows:
 1. 1/6 share to Cecerina Karoki M’Guatu
 2. 1/6 share to Anastancia Karimi M’Guatu
 3. 1/6 share to Cecilia Kaimuri
 4. 1/6 share jointly to Robert Muneje and Fridah Kanena
 5. 1/6 share to Georgina Kathambi
 6. 1/6 share to Patrick Nyamu M’Guatu
 3. Certificate of Confirmation of Grant dated 15th March, 2021 shall be rectified in terms of order (2) above
 4. An order is hereby issued cancelling the registration of inhibition registered on LR No. Kiirua/Naari-maitei/505 on 15th July, 2021.



5. In the event that M'Mwirichia M'Guatu (1st Administrator) declines to sign the transmission forms, this court hereby authorizes and empowers the Deputy Registrar of this court to sign all the necessary transmission documents on his behalf to ensure that the estate of deceased is transmitted
6. This cause will be mentioned on 12th June, 2024 to confirm compliance with these orders and the progress of the Interested Party's intended appeal

DELIVERED IN MERU THIS 18TH DAY OF APRIL 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For 1st Administrator/ Respondent -Ms. Kerubo for Kiautha Arithi & Co. Advocates

For 2nd Administrator/Applicant - Ms. Gatwiri for Wilson P. Mburugu & Co. Advocates

For Interested Party - Ms. Kerubo for Kiautha Arithi & Co. Advocates

