



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of M’Kwaria M’Kiambati (Deceased) (Succession Cause
230 of 1993) [2024] KEHC 5853 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 230 OF 1993
EM MURIITHI, J
MAY 23, 2024**

IN THE MATTER OF THE ESTATE OF M’KWARIA M’KIAMBATI (DECEASED)

BETWEEN

VICTOR MUGUTE KWARIA 1ST PETITIONER

JULIUS MUTUA KWARIA 2ND PETITIONER

AND

JULIUS MURIUNGI RUKARIA APPLICANT

RULING

1. By Summons under certificate of urgency dated 18/9/2023 pursuant to section 47 of the [Law of Succession Act](#), the Applicant seeks that:
 1. Spent
 2. This honorable court be pleased to review, vary and set aside the orders issued on 29/6/23 vide application by the Protestor dated 19/5/23 and expunge the inclusion of LR Abothuguchi/L-Kijja/670 and 671 in this cause.
 3. Upon granting of prayer 2 hereinabove this honorable court be pleased to lift the orders of inhibition herein made on 29/6/23 affecting L.R Abothuguchi/L-Kijja/670 and 671 since they do not form part of the estate.
 4. This honorable court be pleased to grant any further orders in the interest of justice.
 5. The costs of this application be provided for.
2. The grounds upon which the application is premised are set out in the application and supporting affidavit of Julius Muriungi Rukaria, the Applicant herein, sworn on even date. He avers that the deceased transferred to him L.R No. Abothuguchi/L-Kijja/670 on 18/12/1990 while he was alive. The



administrator herein transferred to him L.R No. Abothuguchi/L-Kijja/671 after the conclusion of the succession cause with the approval of all the family members including the widow of the deceased on 18/11/1996. It follows that the two parcels of land do not form part of the estate of the deceased to be subjected to any proceedings or distribution, and they ought to be severed from these proceedings. It is clear that the court was actually misled to issue orders affecting his properties which do not form part of the estate and thus the need for review, varying and setting aside of the orders of 29/6/2023 in so far as his properties are concerned. The Respondents have actually sold part of their shares to other people and he suspects that there is some collusion to use ingenious ways to fraudulently take away his properties unlawfully and sell to unsuspecting buyers. The Respondents and all family members of the deceased herein have never lived on his properties and have no developments thereon as they live on L.R No. Abothuguchi/L-Kijja/528. He urges the court to interrogate the issues and facts in this matter in order to unearth the truth. He is a retired civil servant who should be protected to enjoy his retirement in peace, and prays for the application to be allowed.

3. The Applicant swore a supplementary affidavit on 29/1/2024 in support of his application.
4. Victor Mugute Kwaria, the Petitioner herein opposed the application vide a replying affidavit sworn on 12/1/2024. He denies transferring L.R No. Abothuguchi/L-Kijja/671 to the Applicant and contends that the deceased could not have transferred L.R No. Abothuguchi/L-Kijja/670 to the Applicant during his lifetime because the title was closed on 28/1/1990 upon subdivision of L.R No. Abothuguchi/L-Kijja/368 to L.R No.s Abothuguchi/L-Kijja/670 and 671.
5. Julia Mutua Kwaria, the Protestor herein opposed the application through his replying affidavit sworn on 12/1/2024. He contends that the Applicant is not a beneficiary of the estate of their father. The beneficiaries of the deceased all have their lives settled on L.R No.s Abothuguchi/L-Kijja/670, 671, 672, 673 and 674 and the Applicant colluded with the Petitioner to secretly file this cause without their knowledge, consent and/or authority, and thus the proceedings to obtain the grant were defective in substance. The Petitioner included the purported purchasers in the grant who are not beneficiaries of the estate and went ahead to fraudulently transfer to themselves parcels of land to the detriment of the real beneficiaries. It is in the interest of justice that the orders sought herein are denied by the dismissal of the application with costs.
6. By its order of 22/2//2024, the court directed parties to file submissions on the application and ruling reserved, but from the file record, no submissions were filed.

Determination

7. A court can only review its decision upon proof of any of the conditions set out under Order 45 of the *Civil Procedure Rules* as follows:
 - i. That there is discovery of new and important evidence which was not available to the applicant when the judgment or order was passed despite having exercised due diligence; or
 - ii. That there was a mistake or error apparent on the face of the record; or
 - iii. That sufficient reasons exist to warrant the review sought. In addition to proving the existence of the above grounds, the applicant must also demonstrate that the application was filed without unreasonable delay.”
8. The Applicant contends that he purchased L.R No. Abothuguchi/L-Kijja/670 from the deceased during his lifetime and transfer effected on 18/12/1990. The court does not have the benefit of



interrogating the titles to LR No.s Abothuguchi/L-Kijja/670 and 671 as the Applicant has not annexed them to his application contrary to his averment at paragraph 2 of his supporting affidavit. The court notes the certificate of official search dated 28/12/1993 showing the deceased as the registered proprietor of L.R No. Abothuguchi/L-Kijja/671. The Applicant has not annexed the sale agreements to support his purported purchase of L.R Nos. Abothuguchi/L-Kijja/670 and 671 from the deceased herein and or any transfers thereof. Needless to state, on 29/6/2023 this court revoked the grant of letters of administration issued to the Petitioner on 16/10/1995.

9. This court finds that the Applicant has not demonstrated the necessary existence of any of the grounds of review as set out under Order 45 of the *Civil Procedure Rules* to warrant grant of the orders sought, on the evidence availed in this application.
10. The applicant is at liberty to sue for determination of his claim to the ownership of the parcels of land the subject of the application in the appropriate forum of the Environment and Land Court.

Orders

11. Accordingly, for the reasons set out above, this court finds that the application for review dated 18/9/2023 is without merit and it is dismissed.
12. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 23RD DAY OF MAY, 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Gumato for Mr. Otieno. C for Protestor.

Mr. G. Anampiu for the Applicant.

