



**In re Estate of Samuel Michubu M’wirabua (Deceased) (Succession Cause 102 of 1988) [2024] KEHC 6230 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6230 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 102 OF 1988  
TW CHERERE, J  
MAY 16, 2024**

**BETWEEN**

**JAPHET NTELA MICHUBU ..... APPLICANT**

**AND**

**JULIA WANJA THRO HER PERSONAL REPRESENTATIVE ELIAS  
MWONGELA ..... RESPONDENT**

**RULING**

1. Samuel Michubu M’Mwirabua (Deceased) died sometimes 08<sup>th</sup> May, 1984.
2. In her affidavit filed on 19<sup>th</sup> August, 1988, in support of the petition, Julia Wanja (Julia) stated that deceased was survived by the following:

Widow

Julia Wanja

Children

1. Jeniffer Kathure
2. Ruth Kananu
3. Unice Kaimuri
4. Prisalla Kagwiria
5. Lucy Kathambi
6. Harriet Kendi



7. Elias Mwongera

3. Julia also disclosed that deceased's asset comprised only of LR Njia/Burieruri/161 and Kshs 16,847/30 with Barclays Bank.
4. Julia was issued with Letters of Administration on 08<sup>th</sup> September, 1988 and by a Certificate of Confirmation of Grant dated 14<sup>th</sup> November, 1989, LR Njia/Burieruri/161 and Kshs 16,847/30 with Barclays Bank were distributed wholly to her.
5. Subsequently, Julia alias Juliana died on 14<sup>th</sup> August, 1998, Applicant and Peter Maore filed Maua Succession Cause No E026 of 2021 and obtained letters of administration on 13<sup>th</sup> April, 2021. Subsequently, the said letters of administration were revoked and issued to Julia's son Elias Mwongela (Respondent) and Peter Maore on 05<sup>th</sup> May, 2021.
6. When Japhet Ntela Michubu (Applicant) received information that his father's estate had been partially distributed, he moved the court by way of application dated 27<sup>th</sup> February, 2023 seeking revocation of Letters of Administration issued to Julia and stay of Maua Succession Cause No E026 of 2021 on the following grounds;
  - a) That the Maua Succession Cause is in respect of the Land Parcel No Njia/burieri/161 which is the subject matter in this cause
  - b) That the Maua cause is pending confirmation
  - c) That if the grant in the Maua Cause is confirmed, this application will be rendered nugatory and the applicant herein will be disinherited
  - d) That the proceedings to obtain the grant herein were defective in substance
  - e) That the grant herein was obtained fraudulently by concealment from the court of something material to the cause
  - f) That the grant was obtained by means of untrue allegation of fact essential in point of law to the grant notwithstanding that the allegation was made in ignorance or inadvertently
7. Respondent opposed the summons by way of a replying affidavit sworn on 30<sup>th</sup> October, 2023. He acknowledged that deceased had three wives and children. He stated that deceased owned LR Njia/Burieruri/161 where he settled his 3<sup>rd</sup> family, LR Njia/Ciamwendwa/416 where he settled the 1<sup>st</sup> family and LR Njia/Ciamwendwa/2130 where he settled the 2<sup>nd</sup> family. He blamed the Applicant and his brother of filing Maua Succession Cause No E026 of 2021 in a bid to inherit the 3<sup>rd</sup> family and stated he was substituted as an administrator to protect that interest.
8. Seeing that the parties could not agree, I directed that the matter be heard by way of viva voce evidence.

**Applicant's case**

9. Applicant stated that the deceased family comprised of:

First house

- i. Agnes Mbuuru Widow
- ii. Joseph Mutuma son



iii. Peter Maore Son

2<sup>nd</sup> house

i. Rose Karamana Widow - Deceased

ii. Japhet Ntela Son

iii. Francis Muriungi Son

3<sup>rd</sup> house

i. Julia Wanja Widow – Deceased

ii. Jeniffer Kathure

iii. Ruth Kananu

iv. Unice Kaimuri

v. Prisalla Kagwiria

vi. Lucy Kathambi

vii. Harriet Kendi

viii. Elias Mwongera

10. Applicant additionally stated that the deceased estate comprised of :-

i. LR Njia/Burieri/161

ii. LR Njia/Ciamwendwa/416

iii. LR Njia/Ciamwendwa/2130

11. Applicant further told court that the three families of the deceased were settled on different portions of LR Njia/Burieri/161 and faulted Julia for disinheriting the 1<sup>st</sup> and 2<sup>nd</sup> houses which has the effect of having the 1<sup>st</sup> and 2<sup>nd</sup> families evicted from LR Njia/Burieri/161 where deceased settled them during his lifetime.

12. Joseph Mutuma Michubu supported the Applicant's case. He stated he was deceased's son from the 1<sup>st</sup> house and had settled on LR Njia/Burieri/161 together with the Applicant, Respondent and Peter Maore.

### **Respondent's case**

13. Respondent confirmed deceased had three families and owned three assets. He confirmed that the children of the three houses have settled on LR Njia/Burieri/161 but stated that the 1<sup>st</sup> and 2<sup>nd</sup> house ought to settle on LR Njia/Ciamwendwa/416 and LR Njia/Ciamwendwa/2130 respectively.

14. His witness Zakayo BIRTHU Lirenge confirmed that children of deceased's three houses have settled on LR Njia/Burieri/161 and that deceased did not indicate how he wanted his estate distributed.



## Analysis and determination

15. I have considered the application for revocation in the light of the affidavits and annexures thereto, the oral evidence and submissions of the parties and I have deduced the following issues for determination:
1. Whether the grant issued in this cause ought to be revoked
  2. Whether Maua Succession Cause No E026 of 2021 ought to be stayed
  3. How ought the estate of deceased be distributed?

### 1. Whether Certificate of Confirmation of Grant dated 14<sup>th</sup> November, 2019 ought to be revoked

16. The grounds for revocation of a grant are provided under section 76 of the Act as follows:

“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 has ordered or allowed; 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.”

17. Applicant has demonstrated, a fact that the Respondent concedes that at the time of filing this cause up to the time the grant in favour of Julia Wanja was confirmed distributing LR Njia/Burieruri/161 to her wholly, Julia failed to disclose that deceased had two other families and also failed to provide for them.
18. Applicant has demonstrated and Respondent has conceded, that the three families of the deceased have settled on LR Njia/Burieruri/161 a fact which Julia Wanja failed to disclose to the court.
19. On the other hand, Applicant has demonstrated, a fact that the Respondent concedes that deceased's estate also comprises of LR Njia/Ciamwendwa/416 and LR Njia/Ciamwendwa/2130 which Julia Wanja did not disclose when she filed this cause.



20. Applicant has likewise demonstrated that Julia Wanja filed this cause without involving the 1<sup>st</sup> and 2<sup>nd</sup> houses.
21. There is no doubt that deceased did not leave a will and the allegation by Respondent that deceased had bequeathed LR Njia/Burieruri/161 to the 3<sup>rd</sup> house is therefore rejected.
22. From the foregoing, I am satisfied that the Letters of Administration issued on 08<sup>th</sup> September, 1988 and the Certificate of Confirmation of Grant dated 14<sup>th</sup> November, 1989 distributing LR Njia/Burieruri/161 and Kshs 16,847/30 with Barclays Bank wholly to Julia were obtained fraudulently by the making of a false statement and by the concealment from the court of the fact that deceased had other beneficiaries and owned other assets. These orders have the effect of unlawfully disinheriting the 1<sup>st</sup> and 2<sup>nd</sup> houses of LR Njia/Burieruri/161.

## **2. Whether Maua Succession Cause No E026 of 2021 ought to be stayed**

23. The proceedings in Maua Succession Cause No E026 of 2021 arise from unlawfully obtained Letters of Administration issued on 08<sup>th</sup> September, 1988 and the Certificate of Confirmation of Grant dated 14<sup>th</sup> November, 1989 and cannot be allowed to stand.

## **3. How ought the estate be distributed?**

24. In a case of this nature where the deceased died intestate and was a polygamous man survived by one widow and children, the anchor on distribution of his estate is Section 40 of the *Law of Succession Act* which primarily provides that;

“ 40.

- (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children”.

25. Consequently, the orders that commend to me and which I hereby issue are as follows:
  1. Letters of Administration issued on 08<sup>th</sup> September, 1988 and the Certificate of Confirmation of Grant dated 14<sup>th</sup> November, 1989 issued in this cause are revoked
  2. The proceedings and all consequential orders issued thereto in Maua Succession Cause No E026 of 2021 are a nullity and are quashed.
  3. Peter Maore, Japhet Ntela Michubu and Elias Mwongela are appointed joint administrators of deceased’s estate representing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> houses respectively.
  4. Letters of administration shall forthwith issue to Peter Maore, Japhet Ntela Michubu and Elias Mwongela
  5. The Land Registrar Meru is directed to cancel title number LR Njia/Burieruri/161 in the name of Julia Wanja alias Juliana Wanja Michubu and revert it to the name of Samuel Michubu M’Mwirabua



6. Upon execution of order (5) above, Peter Maore, Japhet Ntela Michubu and Elias Mwangela shall either jointly or severally apply for confirmation of the grant identifying respective shares of each of the deceased's beneficiaries
7. Upon the filing of the 1<sup>st</sup> mode of distribution, the other administrators and beneficiaries who will not agree with it shall be at liberty to file their respective modes of distribution
8. Mention on 03<sup>rd</sup> October, 2024 to confirm compliance with these orders and for further orders and/or directions
9. The Deputy Registrar of this court is directed to call for Maua Succession Cause No E026 of 2021
10. Each party shall bear its own costs

**DELIVERED AT MERU THIS 16<sup>th</sup> Day of May 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Mr. Gitonga for Harun Gitonga & Co. Advocates

For Respondent - Mr. Thangichia for Thangichia M. David & Co. Advocates

