



REPUBLIC OF KENYA



In re Estate of Gervasio Iruki M’thiringi (Deceased) (Succession Cause 15 of 1994) [2024] KEHC 7102 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 15 OF 1994**

TW CHERERE, J

JUNE 13, 2024

IN THE MATTER OF THE ESTATE OF GERVASIO IRUKI M’THIRINGI (DECEASED)

AND

**IN AN APPLICATION FOR SUBSTITUTION OF DECEASED
ADMINISTRATOR AND RECTIFICATION OF GRANT**

IN THE MATTER OF

IRUKI M. PHINEUS APPLICANT

RULING

1. The estate in this matter was distributed in favour of Colleta Nthama Iruki *vide* a Certificate of confirmation of grant issued on 02nd September, 1994.
2. That Colleta Nthama Iruki has since died on 05th March, 2015 as has been demonstrated by a certificate of death dated 02nd July, 2015.
3. By summons dated 13th December, 2023, Applicant who is son of deceased and Colleta Nthama Iruki prays he be allowed to take over the administration of his father’s estate on behalf of his deceased mother.
4. Applicant further avers that he had discovered that his father owned additional assets that were not distributed in this cause. The assets which are supported by copies of certificates of search in the name of the decaed are as follows:
 1. Tigania/Antuamburi/4064
 2. Tigania/Antuamburi/4116
 3. Tigania/Antuamburi/4594
 4. Tigania/Antuamburi/6112



5. Tigania/Antuamburi/6168
 6. Tigania/Antuamburi/7939
 7. Tigania/Antuamburi/7944
5. No evidence was tendered to demonstrate that Akaiga Mikinduri/6085, Amwath/maua no 4807 and 5422 and Kula Pesa Isiolo Plot no BCR BO.B-14 belong to the deceased.
 6. Tigania/Akaiga/5085 belongs to Colleta Nthama Iruki and ought to be distributed in her estate in Meru CM Succession no E071 OF 2021.
 7. The record demonstrates that of the numerous assets available for distribution, Applicant proposes to give Doreen Kagwiria Iruki and Caroline Gakii Iruki who are his sisters who and also deceased's daughters only an acre each.
 8. Section 38 of the *Law of Succession Act* (the Act) which is applicable to this Cause provides that:

“Where an intestate has left a surviving child or children but no spouse the net estate shall subject to the provisions of Section 41 and 42 devolve upon the surviving child, if there be only one or shall be equally dived among the surviving children.”
 9. Objectors are daughters of the deceased and therefore heirs of his estate as a matter of right.
 10. There being no evidence that the daughters of the deceased have renounced their equal right to their father's estate, there cannot be any justification for discriminating and denying them their rightful inheritance.
 11. It will be pretentious for any person to say or act ignorantly of the fact that discrimination of any person on the basis of gender or status is prohibited under the *Constitution of Kenya, 2010*, because; other than the existence of abundantly clear provisions of the Constitution, the chain of judicial decisions on discrimination on the basis of gender or status are equally clear. (See *Rono v Rono & Another*, 2008 1 KLR (G & F) page 803; *Douglas Njuguna Muigai v John Bosco Maina Kariuki & another* [2014] eKLR; *Mwongera Mugambi Rinturi & another v Josphine Kaarika & 2 others* [2015] eKLR; *Stephen Gitonga M'murithi v Faith Ngira Murithi* [2015] eKLR and *Joyce Kabiti M' Turuchu v David M' Ntiritu Kiambi* [2016] eKLR).
 12. From the foregoing, the summons dated 03rd July, 2023 and filed on 06th July, 2023 is determined in the following terms;
 1. Iruki M. Phineus and Doreen Kagwiria Iruki are appointed as administrators of the estate
 2. Letters of administration shall issue accordingly
 3. The following assets and any other asset of the deceased and other assets that become available for distribution shall be distributed in equal shares to their children Doreen Kagwiria Iruki, Caroline Gakii Iruki, Iruki M. Phineus, Naftali Mwiti Iruki and Linus Thurania Iruki
 - i. Tigania/Antuamburi/4064
 - ii. Tigania/Antuamburi/4116
 - iii. Tigania/Antuamburi/4594
 - iv. Tigania/Antuamburi/6112



- v. Tigania/Antuamburi/6168
 - vi. Tigania/Antuamburi/7939
 - (vii) Tigania/Antuamburi/7944
- 4. Certificate of Confirmation of Grant dated 02nd September, 1994 shall be rectified accordingly
 - 5. Mention on 03rd October, 2024 to confirm transmission

DELIVERED AT MERU THIS 13TH DAY OF JUNE 2024

WAMAE. T. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Ms. Kaimenyi for Kithome & Mutinda & Co. Advocates

