



**In re Estate of M’etaya Nabea (Deceased) (Succession Cause
204 of 2005) [2024] KEHC 7100 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 204 OF 2005
TW CHERERE, J
JUNE 13, 2024
ESTATE OF M’ETAYA NABEA (DECEASED)
IN THE MATTER OF APPLICATION FOR REVOCATION OF GRANT**

BETWEEN

MUTUMA M’ETAYA PETITIONER

AND

TERESA ATURU KANYUA 1ST OBJECTOR

MONICA KABIRIA M’ETAYA 2ND OBJECTOR

RUSIA KANOCIA METAYA 3RD OBJECTOR

PENINA NTAWA 4TH OBJECTOR

POLINA KALAYU 5TH OBJECTOR

AND

MWO’THIRU MUTUMA INTERESTED PARTY

CECILIA KARIMI MUTUMA INTERESTED PARTY

RULING

1. M’Etaya Nabea (Deceased) died on 05th May, 1990. His estate comprised of LR. Ithima/Antuambui/133.
2. Mutuma M’Etaya (Petitioner) who is now deceased was the son of Deceased. Objectors are daughters of the deceased and the Interested Parties are widows of the Petitioner.
3. By summons dated 03rd July, 2023 and filed on 06th July, 2023, Objectors seeks orders that:



1. Spent
2. The grant of letters of administration issued to the Petitioner on 15th September, 2005 and confirmed on 17th September, 2007 be revoked and LR. Ithima/Antuambui/133 be reverted to the name of the deceased.
3. Letters of administration be issued to Teresa Aturu Kanyua (1st Objector)
4. The summons is supported by an affidavit sworn by Teresa Aturu Kanyua (1st Objector) on 03rd July, 2023 in which he faults his brother, the Petitioner, for disinheriting the Objectors who are daughters of the Deceased.
5. By an order dated 19th October, 2023, Mwothiru Mutuma and Cecilia Karimi Mutuma (Interested Parties) were appointed as administrators in place of their husband, the Petitioner, now deceased.
6. By her replying affidavit sworn on 02nd October, 2023, Mwothiru Mutuma (1st Interested Party) concedes that the Objectors are daughters of the Deceased but contends that they are not entitled to the estate of their father for the reason that they were married long before the estate was distributed.
7. An attempt to have the parties settle this matter through mediation failed. I have considered the summons in the light of the affidavits on record and I have identified the following issues for determination:
 1. Whether Objectors are beneficiaries of deceased's estate
 2. Whether the grant of letters of administration issued to the Petitioner on 15th September, 2005 and confirmed on 17th September, 2007 ought to be revoked

a. Whether Objectors are beneficiaries of deceased's estate

8. Section 38 of the *Law of Succession Act* (the Act) which is applicable to this cause where only the deceased's children are left 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 divided among the surviving children.”
9. Objectors are daughters of the deceased and therefore heirs of his estate as a matter of right.

b. Whether the grant issued on 21st January, 2019 ought to be revoked

10. Section 76 of the Act provides 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.”

11. By failing to disclose that the Deceased was survived by daughters, the Petitioner no doubt concealed something material from the court and thus obtained the grant fraudulently by the making of a false statement that he was the only beneficiary of the estate.
12. There being no evidence that the daughters of the deceased had renounced their equal right to their father’s estate, there cannot be any justification for discriminating and denying them their rightful inheritance.
13. I have considered the Interested Parties’ contention that the Objectors were married long before the distribution of the estate and I find that they are entitled to their father’s estate whether married or not married.
14. 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).
15. The green card for LR. Ithima/Antuambui/133 certified on 12th June, 2023 confirms that the estate of the Deceased was transmitted wholly to Mutuma M’Etaya.
16. From the foregoing, I find that the summons dated 03rd July, 2023 and filed on 06th July, 2023 has merit and it is determined in the following terms;
 1. The grant of letters of administration issued to the Petitioner on 15th September, 2005 and confirmed on 17th September, 2007 is hereby revoked
 2. Teresa Aturu Kanyua (1st Objector) is appointed as the administrator of the estate of the deceased
 3. Letters of Administration shall issue accordingly



4. The Land Registrar Meru is directed to cancel title for LR. Ithima/Antuambui/133 in the name of Mutuma M'Etaya and revert it to the name of the deceased M'Etaya Nabea.
5. Upon compliance with order (4) above, Teresa Aturu Kanyua (1st Objector) shall without delay apply for confirmation of the grant after identifying the shares for each of the Deceased's children including Mutuma M'Etaya now deceased
6. Mention on 03rd October, 2024 to confirm compliance with orders and for further orders and/or directions
 - a. Each party shall bear its own costs of this summons

DELIVERED AT MERU THIS 13TH DAY OF JUNE 2024

T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Objectors - Mr. Mwirigi for Mwirigi Kaburu & Co. Advocate

For Interested Parties - Ms. Asuma for Mutembei & Kimathi Advocates

