



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Ruriga M'ikiara (Deceased) (Succession Cause  
752 of 2015) [2024] KEHC 7099 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7099 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 752 OF 2015**

**TW CHERERE, J**

**JUNE 13, 2024**

**IN THE MATTER OF THE RURIGA M'IKIARA (DECEASED)**

**BETWEEN**

**PAULINA NKAWA M'MUKETHA ..... 1<sup>ST</sup> PETITIONER**

**DOUGLAS KAIMENYI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**CHARLES MARETE BUURI ..... 1<sup>ST</sup> APPLICANT**

**RUFUS KIRIGA M'IKIRIGIA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**RAEL KAREGI M'RUKARIA ..... INTERESTED PARTY**

**RULING**

1. By Certificate of Confirmation dated 13<sup>th</sup> March, 2017, deceased's estate comprised in LR. Abothuguchi/Ruiga/228 was distributed to the 2<sup>nd</sup> Petitioner and the Applicants.
2. Subsequently, LR. Abothuguchi/Ruiga/228 was portioned into LR. Abothuguchi/Ruiga/3276, 3277 and 3278 and titles issued in the names of Douglas Kaimenyi, Rufus Kiriga M'Ikirigia and Charles Marete Buuri respectively as evidenced by the green card and search certificates in respect thereof. Additional search certificates reveal that Douglas Kaimenyi may have portioned LR. Abothuguchi/Ruiga/3276 into LR. Abothuguchi/Ruiga/3966 and 3967 and obtained title deeds in his name.
3. By summons dated 08<sup>th</sup> June, 2022, Petitioners sought to cancel all titles arising out of LR. Abothuguchi/Ruiga/228 and went ahead to record a consent dated 24<sup>th</sup> April, 2023 (yet to be adopted as an order of the court) and purported to cancel titles by consent.



4. By summons dated 18<sup>th</sup> April, 2023, Applicants seek leave to defend the summons dated 05<sup>th</sup> June, 2022.
5. Rael Karegi M'Rukaria (Interested Party) opposed the application vide a replying affidavit sworn on 27<sup>th</sup> February, 2023 and stated that 2<sup>nd</sup> Petitioner and the 2<sup>nd</sup> Applicant are strangers to the estate. She did not make any response concerning the 1<sup>st</sup> Applicant.
6. Paulina Nkawa M'Muketha (1<sup>st</sup> Petitioner) opposed the application vide an undated response in which she averred that the Applicants who are her sons are not entitled to her father's estate.

### **Analysis and Determination**

7. I have considered the summons dated April 18, 2023 in the light of affidavits and annexures filed by the parties.
8. The crux of the matter really is whether Applicants ought to be afforded an opportunity to defend their titles before they are cancelled.
9. In the case of *Sceneries Limited v National Land Commission* (2017) eKLR, the Court held that;
 

“the right to a fair hearing under Article 50(1) of *the Constitution* encompasses several aspects. these includes, the individual being informed of the case against her/him, the individual being given an opportunity to present/her/his side of the story or challenge the case against her/him and the individual having the benefit of a public hearing before a court or other independent and impartial body.”
10. The rules of natural justice “*audi alteram partem*” were elucidated in the case of *Msagha vs. Chief Justice & 7 Others* Nairobi HCMCA no. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553) where eth court held that:

“The Court observes firstly that the rules of natural justice “*audi alteram partem*” hear the other party, and no man/woman may be condemned unheard are deeply rooted in the English common law and have been transplanted by reason of colonialization of the globe during the hey-days we of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision...It is paramount at this juncture that this court establishes the ingredients and/or components of natural justice. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material.



11. The Applicants being holders of the titles are entitled to the application of the Rules of natural justice which requires that no person should be condemned unheard.
12. From the foregoing analysis, the summons dated 18<sup>th</sup> April, 2023 is determined in the following terms:
  1. The consent dated 24<sup>th</sup> April, 2023 purporting to cancel the Applicants title deeds for LR. Abothuguchi/Ruiga/3277 and 3278 respectively without giving the Applicants a hearing is hereby declared a nullity.
  2. Applicants are granted leave to oppose the summons dated 08<sup>th</sup> June, 2022
  3. Applicants have 14 days from today's date to file and serve their responses
  4. This cause will be mentioned on 22<sup>nd</sup> July, 2024 to confirm compliance with these orders and for direction as to the hearing of the summons dated 08<sup>th</sup> June, 2022

**DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF JUNE 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Applicants - Mr. Nyaga for Kiautha Arithi & Co. Advocates

1<sup>st</sup> Petitioner - Present in person

2<sup>nd</sup> Petitioner - Present in person

For Interested Party - Ms. Kerubo for Kiogora Mugambi & Co. Advocates

