



**In re Estate M'Riria M'Bagine (Deceased) (Succession Cause
742 of 2012) [2024] KEHC 7089 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 742 OF 2012
TW CHERERE, J
JUNE 6, 2024**

BETWEEN

RACHAEL WANJA RIRIA BENEFICIARY

AND

PATRICK GITONGA RIRIA 1ST ADMINISTRATOR

EMILIO MAGAJU KIUNGA 2ND ADMINISTRATOR

RULING

1. By consent of the parties recorded on 24th October, 2019, it was agreed as follows:
 1. Certificate of Confirmation of Grant issued on 27th March, 2014 is amended as follows:
 - i. LR No. Abothuguchi/Kijja/357
 - a. Patrick Gitonga Riria - 10 acres
 - b. Grace Kagwiria to hold 10 acres in trust for herself and the minor children of Tarcicio Kamakia (deceased) namely Dennis Karani and Teddy Muriithi
 - c. Christine Kajuju M'Riria - I acre
 - d. Teresia Kathure M'Riria - I acre
 - e. Rachel Wanja Riria - I acre
 - f. Olympia Kinya M'Riria - I acre
 - g. Roads - I acre
 - h. Balance equally to Christine Kajuju M'Riria, Teresia Kathure M'Riria and Rachel Wanja Riria



- ii. LR No. Abothuguchi/Gitie/335
 - a. 1.00 acres to Simon Gituma M'Riria
 - b. 0.91 acres to Patrick Gitonga Riria
 - c. 1.05 acres to Grace Kagwiria to hold in trust for herself and the minor children of Tarcicio Kamakia (deceased) namely Dennis Karani and Teddy Muriithi
 - d. Balance of 1.05 acres to Olympia Kinya M'Riria, Christine Kajuju M'Riria, Teresia Kathure M'Riria and Rachel Wanja Riria
- iii. LR No. Abothuguchi/Gitie/713
 - Wholly to Murangiri Fredrick (deceased's grandson)

2. By a ruling dated 11th March, 2021, this court directed that LR No. Abothuguchi/Kijja/121 be distributed in equal shares to Olympia Kinya M'Riria and Rachel Wanja Riria.
3. Subsequently on 18th November, 2021, an amended Certificate of Confirmation of Grant was issued in terms of paragraphs (1) and (2) above.
4. By chamber summons dated 23rd August, 2022 supported by an affidavit sworn by Rachel Wanja Riria (Applicant) filed on even date, Applicant faults the Petitioners/Respondents for failing to distribute and transmit the estate and seeks the following orders:
 1. Transmission documents for LR No. Abothuguchi/Kijja/357, LR No. Abothuguchi/Gitie/335, LR No. Abothuguchi/Gitie/713 and LR No. Abothuguchi/Kijja/121 be signed by the Deputy Registrar of this court
 2. The subdivision of the estate be conducted by a district surveyor
 3. Petitioners do surrender title deeds for all subdivisions arising out of the estate
 4. Title deeds for all subdivisions arising out of the estate be cancelled
5. By his replying affidavit sworn on 02nd December, 2022, Patrick Gitonga Riria (1st Administrator/Respondent) avers that the court did not issue any order for cancellation of titles, and that the estate having been already distributed, Applicant should bear the costs of further subdivision if any.
6. Annexed to the supporting affidavit are title deeds for LR No. Abothuguchi/Kijja/121 in the name of Emilio Magaju Kiunga, LR No. Abothuguchi/Kijja/1534, 1535 and 1536 in the names of Olympia Kinya M'Riria, Christine Kajuju M'Riria, Teresia Kathure M'Riria.
7. I have considered the summons in the light of the affidavits of record and annexures thereto.
8. Whereas this court by a ruling dated 11th March, 2021 directed that LR No. Abothuguchi/Kijja/121 be distributed in equal shares to Olympia Kinya M'Riria and Rachel Wanja Riria, the copy of title deed for LR Abothuguchi/Kijja/121 reveals that the said asset is still in the name of Emilio Magaju Kiunga.
9. It should be remembered that the moment this court distributed LR Abothuguchi/Kijja/121 in equal shares to Olympia Kinya M'Riria and Rachel Wanja Riria, the title deed in the name of Emilio Magaju Kiunga by application of that order stood cancelled notwithstanding that no express order of such cancellation had been issued.
10. The Applicant was assigned a share on LR No. Abothuguchi/Kijja/357, LR No. Abothuguchi/Gitie/335 and LR No. Abothuguchi/Kijja/121.



11. There is no evidence of subdivisions of the said assets to the respective beneficiaries and whereas the 1st Administrator/Respondent has filed copies of title deeds for LR No. Abothuguchi/Kiija/1534, 1535 and 1536 in the names of Olympia Kinya M'Riria, Christine Kajuju M'Riria, Teresia Kathure M'Riria, he failed to explain from which asset they were drawn. He similarly failed to explain why he availed just one title for each of the three beneficiaries whereas they were entitled to shares on LR No. Abothuguchi/Kiija/357, LR No. Abothuguchi/Gitie/335 and LR No. Abothuguchi/Kiija/121.
12. Applicant additionally failed to annex evidence to demonstrate that all the beneficiaries and particularly the Applicant had received their shares of the estate as ordered by the court.
13. From the foregoing, it has been demonstrated that the Administrators/Respondents are not keen to perform their duties of transmitting the estate of the deceased to its beneficiaries.
14. But the court cannot allow the beneficiaries to suffer without a remedy for it has the jurisdiction to revoke the grant issued to the Applicants for their failure to implement it and notice is given that the court will not, in the interest of justice hesitate to take this drastic action.
15. From the foregoing analysis, it is hereby ordered as follows:
 1. The Land Registrar Meru is directed to cancel title deed for LR No. Abothuguchi/Kiija/121 in the name of Emilio Magaju Kiunga and transmit it to Olympia Kinya M'Riria and Rachel Wanja Riria in equal shares
 2. Pending issuance of further orders on the chamber summons dated 23rd August, 2022 filed on even date, Patrick Gitonga Riria and Emilio Magaju Kiunga are hereby directed to avail copies of title deeds and any other documentary evidence to demonstrate the manner in which they have distributed deceased's estate comprised in LR No. Abothuguchi/Kiija/357, LR No. Abothuguchi/Gitie/335 and LR No. Abothuguchi/Gitie/713
 3. Mention on 25th July, 2024 to confirm compliance and for further orders

DELIVERED AT MERU THIS 06TH DAY OF JUNE 2024

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Mrs. Ntarangwi for J.K.Ntarangwi & Co. Advocates

For Respondent - Ms. Mugwe for Mutuma & Koskei Advocates

