



REPUBLIC OF KENYA



**In re M’Muguna M’Arimi alias Muguna Arimi (Deceased) (Succession Cause 427 of 2013) [2023] KEHC 786 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 427 OF 2013  
TW CHERERE, J  
FEBRUARY 9, 2023**

**BETWEEN**

**PRISCILLA KAGETE PETER ..... APPLICANT**

**AND**

**ISAIAH MAINGI MBAYA ..... RESPONDENT**

**RULING**

1. By summons filed on December 21, 2020, applicant seeks that the grant issued herein be revoked on the ground that part of the estate was distributed to the Isaiah Maingi Mbaya (respondent) who is a stranger. The application is based on the ground on its face and on the affidavit of the applicant sworn on November 15, 2020 in which she reiterates the prayers in the application.
2. Respondent by his replying affidavit sworn on June 9, 2021 avers that he bought the portion of the estate distributed to him from deceased’s wife for which eh has taken possession and developed and also obtained a title deed in terms of the confirmed grant.
3. In her supplementary affidavit, applicant avers that their mother could not have sold part of the estate without involving her children and that she died on February 25, 2014 before the confirmation of the grant. She also denies ever signing the transmission documents.
4. I have considered the application in the light of the affidavits on record ad submission on behalf of applicant and respondent.
5. The issue concerning distribution of 0.25 acres of deceased’s estate was determined by a judgment dated November 23, 2015 in which Gikonyo J after hearing this matter interpartes made the following orders:
  1. The sale of 0.25 acres of deceased’s estate in LR. Nyaki/Munithu/676 was for good reason after 0.25 acres is hived off for Isaiah Maingi Mbaya.



2. Distribution of the estate property shall be as follows: -
  - a. 0.25 acres to Isaiah Maingi Mbaya
  - b. The balance of approximately 0.36 acres be distributed equally to
    - i. Antony Mwirigi
    - ii. Purity Kairuthi M'Muguna
    - iii. Pricilla Kagete Peter
    - iv. Janerose Kajigi
    - v. Joyce Kathinki
  
6. The Court of appeal in the case of *William Koross (Legal personal Representative of Elijah C.A. Koross) v Hezekiah Kiptoo Komen & 4 others* [2015] eKLR addressed the issue of res judicata and stated as follows:
 

“The philosophy behind the principle of res judicata is that there has to be finality. Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives in. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.....”
  
7. In yet another case, the Court of Appeal in *Kenya Commercial Bank Limited v Benjob Amalgamated Limited* [2017] eKLR cited with approval the decision in *Lal Chand v Radha Kishan*, AIR 1977 SC 789 where it was stated that;
 

“The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.

The practical effect of the *res judicata* doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such suit.”
  
8. With respect, the issues raised by the applicant in this application are res judicata for the reason that they have already been determined by a court of competent jurisdiction.
9. Most unfortunately, the application for revocation appears to be a repudiation and negation of the salutary aims of the res judicata bar. By seeking an order to redistribute the estate, I understand the Applicant to ask this court to take a different view from the previous decision by this court.
10. The court’s order on distribution was not appealed and remain binding on the parties. This court therefore declines an invitation to allow the Applicant to improperly and impermissibly re-litigate endlessly on a determined issue for litigation must come to an end.
11. If there be a dispute concerning how Respondent obtained his title after the court distributed 0.25 acres to him, that matter of title to land falls within the realm of the Environment and Land Court



which under the provision of article 162 (b) has jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and the titles to, land and to make provisions for its jurisdiction functions and powers and for connected purposes.

12. From the foregoing, this court makes the following orders:

1. The issues raised in the summons filed on December 21, 2020 are *res judicata*
2. The summons has no merit and it is dismissed
3. Applicant will bear the costs of this application

**DATED AT MERU THIS 09<sup>th</sup> DAY OF February 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Morris Kinoti**

**For Applicants - Mr. Gikunda for Gikunda Anampiu & Co. Advocates**

**For Respondents - Mr. Gitonga for Basilio Gitonga, Muriithi & Associates**

