



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of M'Rukunga M'Limberia (Deceased) (Succession Cause  
100 of 2014) [2023] KEHC 730 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 730 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 100 OF 2014  
TW CHERERE, J  
FEBRUARY 2, 2023**

**BETWEEN**

**ROMANO NKARAKACHIA RUKUNGA ..... PETITIONER**

**AND**

**RIIRI LUCI KANENE ..... OBJECTOR**

**AND**

**SEBASTIAN MWENDA IWETA ..... INTERESTED PARTY**

**RULING**

1. Deceased's died sometimes on February 6, 1998. His estate comprised of LR AKITHI/ATWANA/749 and LR AKITHI/ATHWANA/AKITHI/998.
2. Letters of Administration were issued to Romano Nkarakachia Rukunga (Respondent) on May 27, 2014. Subsequently on June 25, 2015 a Certificate of Confirmation of Grant was issued and was on June 14, 2016, rectified distributing the estate as follows:
  - i. LR AKITHI/ATWANA/749
    - a. Sebastian Mwenda Iweta - 1.40 ACRES
    - b. Romano Nkarakachia Rukunga - Balance
  - ii. LR AKITHI/ATHWANA/AKITHI/998  
Wholly to Romano Nkarakachia Rukunga
3. By summons dated August 31, 2022, Objector/Applicant prays for the following order:
  1. That the certificate of confirmation of grant issued to the Petitioner/ Respondent one, Romano Nkarachia Rukunga on the June 25, 2015 be revoked/annulled.



2. That costs of the application be borne by the petitioner and interested party jointly and severally.
4. The summons which is supported by Applicant's affidavit sworn on August 3, 2022 is based on grounds that:
  - i. The grant was obtained by fraud and the concealment of material facts
  - ii. The rightful beneficiaries named herein below have been disinherited
    - a. Warichiu Karongo- daughter
    - b. Achuka M'Rukunga- daughter
    - c. Jeniffer Kairu- daughter
    - d. Riiri Luci Kanene- daughter
    - e. Maliceta Munyala Kananu daughter
    - f. Ezra Kaburanga son (deceased)
    - g. Roman Nkarichia Rukungu son
  - iii. Part of the estate was distributed to Sebastian Mwenda Iweta who is a stranger to the deceased estate
5. By his affidavit sworn on December 9, 2022, Romano Nkarakachia Rukunga concedes that he did not distribute the estate to its rightful heirs. Whereas he does not deny selling land to Sebastian Mwenda Iweta he questions the validity of the agreement.
6. On his part, Sebastian Mwenda Iweta by his affidavit sworn on December 1, 2022 accuses the parties herein of trying to arm-twist him now that the land in issue has appreciated in value.

### **Analysis and determination**

7. I have considered the application in the light of the affidavits on record and the issue for determination is whether a case has been made for revocation of the Letters of Administration.
8. The grounds for revocation of a grant are provided under section 76 of the *Law of Succession* 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) e) That the grant has become useless and inoperative through subsequent circumstances.'

9. In this cause, Romano Nkarakachia Rukunga not only filed this cause secretly but also distributed the estate to himself and one Sebastian Mwenda Iweta to whom he had sold a portion thereof, thereby disinheriting six other rightful beneficiaries and the said distribution cannot be allowed to stand.

10. It is therefore hereby orders as follows:

1. The Certificate of Confirmation of Grant dated June 25, 2015 and rectified on June 14, 2016 is hereby revoked
2. The Land Registrar Meru is directed to cancel all resultant titles and to revert LR No AKITHI/ATWANA/749 and LR No AKITHI/ATHWANA/AKITHI/998 to the name of M'Rukunga M'Limberia (Deceased) notwithstanding that the resultant title deeds may not have been surrendered
3. Upon restoration of LR Nos AKITHI/ATWANA/749 and LR AKITHI/ATHWANA/AKITHI/998, Petitioner/Respondent shall within 30 days apply for confirmation of grant after identifying all beneficiaries and their respective shares
4. The application shall be served on all beneficiaries and the advocate for Sebastian Mwenda Iweta not later than February 17, 2023 and any of parties shall be at liberty to raise any objection if any within 14 days of service
5. This cause shall be mentioned on March 16, 2023 to confirm compliance with these orders and for further orders and/or directions
6. Costs shall be paid by the Petitioner/ Respondent.

**DATED AT MERU THIS 02<sup>nd</sup> Day of February 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Morris Kinoti**

**For Objector/Applicant - Mr. Maranya for M.D.Maranya & Co. Advocates**

**Respondent - In person**

**For Interested Party - Mr. Muthamia for Bundi Muthamia & Co. Advocates**

