



**In re Estate of Francis M'ikiria (Deceased) (Succession Cause  
286 of 2011) [2023] KEHC 3572 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3572 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 286 OF 2011  
TW CHERERE, J  
APRIL 20, 2023**

**BETWEEN**

**TERETHINA NCHENGE M'IKIARA ..... ADMINISTRATOR**

**AND**

**ANICIA KAJIJO M'IKIARA ..... OBJECTOR**

**RULING**

**Background**

1. By a ruling dated, November 22, 2018, Onginjo, J directed that deceased's estate be distributed in terms of the Original Certificate of Confirmation of Grant made on November 11, 2014 and dated August 12, 2015.
2. By summons dated and filed on May 24, 2021, applicant who is a beneficiary of the estate comprised in Abothuguchi/U-kango/270 and Abothuguchi/Igane/184 complains that the Respondent who is the Administrator has to date not distribute the two assets as ordered by the court. Applicant therefore seeks orders That:
  1. The honourable court be pleased to empower the Deputy Registrar of this court to execute all relevant documents in respect of Abothuguchi/U-Kango/270 and Abothuguchi/Igane/184 on behalf of the administrator Terethina Nchenghe M'ikiara
  2. This Honourable Court be pleased to issue an order directing the Land Registrar Imenti North to dispense with the production of copies of ID Card, pin certificate and passport size photographs of Terethina Nchenghe M'ikiara when facilitating transfer of title deeds for Abothuguchi/u-kango/270 to Anicia Kajijo M'ikiara and Abothuguchi/igane/184 to Anicia Kajijo M'ikiara And Her Children Peter Kimotho, Rosemary Ntibuka Muriki, Jennifer Muthoni, Damaris Kiende And Judith Mikiara



3. This Honourable Court be pleased to issue an order directing the Land Registrar Imenti North to lift/remove caution and/or any inhibitions, prohibitions, caveats and/or restrictions registered on land parcels Abothuguchi/U-kango/270 and Abothuguchi/Igane/184
3. The application which is supported by an affidavit sworn by the Applicant is based on grounds that the Administrator/Respondent has neglected, ignored and/or refused to execute transfer documents in terms of the Original Certificate of Confirmation of Grant made on 11<sup>th</sup> November, 2014 and dated 12<sup>th</sup> August, 2015 as directed by the court on 22<sup>nd</sup> November 2018.
4. By her replying affidavit sworn on 13<sup>th</sup> February, 2023, the Administrator/Respondent avers that she already subdivided Abothuguchi/Igane/184 and some portions have already been passed to third parties. In support thereof, the Administrator/Respondent has annexed title No. Abothuguchi/Igane/3435 and Abothuguchi/Igane/3434 in her name and that of one Dennis Mutuma Kiringuri respectively. She has similarly annexed mutation forms that reveal that Abothuguchi/Igane/3435 and Abothuguchi/Igane/3434 arose from subdivision of Abothuguchi/Igane/2819 which means that the subdivision of Abothuguchi/Igane/184 into three portions Abothuguchi/Igane/3433, 3434 and 3435 was not the first subdivision.

### **Analysis and determination**

5. I have considered the application in the light of the affidavits on record vis a vis the court's order dated November 22, 2018.
6. Section 83 (g) of the Law of Succession Act requires the personal representative to complete the administration of the estate within six months from the date of confirmation of the grant, or such longer period as the court may allow. It is now 26 months since the grant was confirmed and deceased's estate remains undistributed.
7. The Applicant blames the Administrator for the delay that has constrained the distribution of deceased's estate in Abothuguchi/U-kango/270 and Abothuguchi/Igane/184 by her failure to sign the necessary transmission documents.
8. The evidence on record further discloses that instead of complying by distributing deceased's estate in terms of the Original Certificate of Confirmation of Grant made on November 11, 2014 and dated August 12, 2015 as ordered by the court, the Administrator has contemptuously continued to mutilate deceased's estate to an extent of distributing it to third parties thereby disinheriting the rightful beneficiaries of the estate.
9. The documents annexed by the Administrator/Respondent additionally reveal that subdivisions continued even as at the year 2022 which was 4 years since the court cancelled the rectified Certificate of Confirmation of Grant made on November 8, 2017 and dated March 6, 2018.
10. Court orders are not made in vain. If for any reason a party has difficulty in complying with court orders, the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit, the same is valid unless set aside on review or on appeal.
11. In *Central Bank of Kenya & Another vs. Ratil Automobiles Limited & Others* Civil Application No Nai 247 of 2006, the Court of Appeal held that Judicial power in Kenya vests in the courts and other tribunals established under the Constitution and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a court of law.



12. In *B v Attorney General* [2004] 1 KLR 431, Ojwang, J (as he then was) appreciated the duty to obey court orders and stated that:

“The court does not, and ought not to be seen to, make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

13. In this case, there has been no explanation why the Administrator/Respondent has failed, neglected and/or refused to comply with court orders regarding distribution of deceased's estate.

14. The court takes judicial notice of the fact that with the mutilation of deceased's estate by the Administrator/Respondent and the unlawful transfers to third parties, the execution of the Original Certificate of Confirmation of Grant made on November 11, 2014 and dated August 12, 2015 might not be achievable unless and until the original title is restored back to the name of the deceased.

15. From the foregoing, I find that the interest of justice is in favour of cancelling all titles arising out of subdivision of Abothuguchi/Igane/184.

16. In the end, I find that the am satisfied that the summons dated and filed on May 24, 2021 has merit and it is allowed in the following terms:

1. An order is hereby issued directing Land Registrar Imenti North to cancel all titles arising out of the subdivision of Abothuguchi/Igane/184 and revert the title to the name of Francis M'ikiria Alias Kiara Kimotho Alias M' Ikiara Kimotho(Deceased)
2. This Honourable Court be and is hereby pleased to empower the Deputy Registrar of this court to execute all relevant documents in respect of Abothuguchi/U-Kango/270 and Abothuguchi/Igane/184 on behalf of the administrator Terethina Nchenge M'ikiara
3. This Honourable Court be and is hereby pleased to issue an order directing the Land Registrar Imenti North to dispense with the production of copies of ID Card, pin certificate and passport size photographs of Terethina Nchenge M'ikiarawhen facilitating transfer of title deeds for Abothuguchi/U-kango/270 to Anicia Kajjjo M'ikiara and Abothuguchi/Igane/184 to Anicia Kajjjo M'ikiara and her children Peter Kimotho, Rosemary Ntibuka Muriki, Jennifer Muthoni, Damaris Kiende and Judith Mikiara
4. This Honourable Court be pleased and is hereby pleased to issue an order directing the Land Registrar Imenti North to lift/remove caution and/or any inhibitions, prohibitions, caveats and/or restrictions registered on LR Abothuguchi/U-kango/270 and LR Abothuguchi/Igane/184
5. Costs of this application shall be borne by the administrator/respondent
6. Mention on July 20, 2023 to confirm compliance with these orders

**DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF APRIL 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Kinoti**

**For Objector/ Applicant - Mr. Kariuki for Kariuki & Mithiga Advocates**



**For Admin/ Respondent - Mr. Mungai for Murango Mwenda & Co Advocates**

