



REPUBLIC OF KENYA



**In re Estate of M'njau M'marete (Deceased) (Miscellaneous Succession Cause 31 of 2016) [2023] KEHC 3134 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3134 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE 31 OF 2016**

**LW GITARI, J**

**APRIL 13, 2023**

**BETWEEN**

**SAMWEL M'RIBA ..... APPLICANT**

**AND**

**JOSHUA MURITHI MIRITI ..... RESPONDENT**

**RULING**

1. On January 16, 2023, the Applicant herein filed a summons application dated January 13, 2023. The application seeks for the following orders:
  - a. That the Registrar of Lands Tharaka Nithi County be directed to cancel all entries made in the register of parcel no Mwimbi/Magumango/955 on January 20, 2016 in favour of Joshua Muriithi Riungu and any other resultant transfer or subdivision pursuant to the fraudulent grant of letters of administration issued on September 16, 2015.
  - b. That the suit property L R No Mwimbi/Magumango/955 be registered in the name of the deceased, M'Njau M'Marete.
  - c. Costs of the application.
2. The application is based on the grounds on the face of it and is supported by the affidavit sworn by the Applicant on January 13, 2023.
3. The Applicant deposes that he is an administrator of the subject estate and that one Lucy Kageni Muriungi is his co-administrator. That prior to their appointment as administrators, one Joshua Murithi Riungu, the Respondent herein and a grandson of the deceased, had been appointed as an administrator. That the grant issued to the Respondent was revoked on September 16, 2015 and this Court authorized the Deputy Registrar to sign all the requisite documents on behalf of the administrators.



4. The Applicant further deposes that he found out that the entire estate was transferred in the name of the former administrator making it impossible for him to administer the estate. He claims that the Respondent has refused to transfer the estate back to the name of the deceased. Further, that the Respondent wants to dispose of the land by force hence the institution of the present application. The applicant thus urged this court to allow the present application as prayed.
5. The Respondent opted not to put in his reply to the application and hence the same remains unopposed.
6. I have considered the Applicant's application dated January 13, 2023. The main issues that arise for determination is whether the Applicant is entitled to the reliefs sought.
7. From the record, the grant issued to the Respondent was revoked on May 8, 2017. On the same date, the Applicant alongside one Lucy Kageni Muriungi, was appointed as the new administrator of the estate. The fresh grant was later confirmed on October 10, 2017 and a Certificate of Confirmation of Grant issued on October 11, 2017. No order was made for cancelling of the entries in the Register pursuant to the revoked grant.
8. The domino effect of the revocation of the grant on whose basis the estate was transmitted to the Respondent was the nullification of any action taken on the strength of the revoked grant, in this case, the transfer of the deceased's estate to the Respondent. Since the respondent had transferred the estate to himself, there should be an order for the cancellation of the said entries.
9. That said, Rule 73 of the *Probate and Administration Rules* gives this Court power to make orders to meet the ends of justice. The rule provides:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court

There is no dispute that the entries made in the register of the said title deeds are still in situ despite the grant having been revoked.

In the circumstances I find that the application has merits. I order that:-

1. The application is allowed.
2. The Land Registrar Tharaka Nithi County to cancel the entries made in the Register pursuant to the grant which was revoked on May 8, 2017 on Land Parcel No Mwimbi/Mugumango/995.
3. The Land Parcel No L R Mwimbi/Mugumango/955 to revert back to the name of the deceased M'Njau M'Marete.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 13<sup>TH</sup> DAY OF APRIL 2023.**

**L W GITARI**

**JUDGE**

