



REPUBLIC OF KENYA



**In re Estate Samson M’Ringera Kirangu (Deceased) (Succession Cause  
723 of 2012) [2023] KEHC 3036 (KLR) (6 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3036 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 723 OF 2012  
EM MURIITHI, J  
APRIL 6, 2023**

**BETWEEN**

**CHARITY NKIROTE M’RINGERA ..... PETITIONER**

**AND**

**AGNES KANANU MUTETHIA ..... 1<sup>ST</sup> APPLICANT**

**SAMWEL MBURUGU KABUTI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**CHRISTINE GATWIRI KIAMBATI ..... INTERESTED PARTY**

**GEOFFREY KINYUA JOHN ..... INTERESTED PARTY**

**RULING**

1. By Summons dated 2/9/2021, the applicants seek an order of inhibition against L.R Nyaki/kithokamwanika/392 being a subdivision of L.R Nyaki/kithokamwanika/50 pending the hearing and determination of this application; and revocation of the confirmed grant herein to allow fair and equitable distribution of the deceased.
2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by Agnes Kananu Mutethia, the 1<sup>st</sup> applicant herein on even date. She avers that she and the 2<sup>nd</sup> applicant are a daughter and a son to the deceased herein while the petitioner is his widow. They were kept in the darkness when the matter was filed and confirmed, and have thus been disinherited of their fathers’ state, part of which the petitioner has sold to strangers. She accuses the petitioner of forging her signature in the consents filed in court, and distributing the estate in an unfair and inequitable manner leaving out herself and other beneficiaries. It is averred that the petitioner gave her children a lion’s share to their detriment, has sold part of the estate to strangers, and she pleads with the court to grant the orders sought in order to preserve the estate.



3. The 2<sup>nd</sup> applicant also swore a supporting affidavit on 2/9/2021 in support of the application.
4. The petitioner has opposed the application vide her replying affidavit sworn on 16/11/2021. She denies disinheriting any child of the deceased, as the distribution was done according to the wishes of the deceased. She provided for the children who were interested in the estate of the deceased, and they all signed consents in support of her mode of distribution. The 1<sup>st</sup> applicant willingly agreed to have no share of the estate of the deceased and she attended court on 19/9/2016, while the 2<sup>nd</sup> applicant has been provided for. The ex-lewa settlement scheme/227 was shared out in accordance with the occupation and use of the beneficiaries as the deceased had shown them. The sale was done in accordance with the law and the chief's letter did not leave out any beneficiaries. Esther Nkirote got 3 acres because her husband was the one who took care of the land before the others could move there. She urges the court to dismiss the application with costs as the grant has been executed.
5. The interested parties opposed the application vide their replying affidavit sworn by Christine Gatwiri Kiambati, the 1<sup>st</sup> interested party herein, on 25/10/2022. She avers that she is the registered owner of L.R No. Nyaki/kithoka-mwnika/391 while her husband, the 2<sup>nd</sup> interested party herein, is the registered owner of L.R No. Nyaki/kithoka-mwanika/364, having purchased them from the petitioner on diverse dates after the grant had been confirmed. Their 2 parcels are resultant subdivisions of the balance in L.R No. Nyaki/kithoka-mwanika/50 which was allocated to the petitioner as per the grant issued on 29/9/2016. After the said purchase, they extensively developed them and built a matrimonial home there. She is opposed to the revocation of the grant, because the applicants were well aware of their occupation. She urges the court to exclude L.R Nos. Nyaki/kithoka-mwanika/364 and 391 from any form of re-distribution as they have acquired good titles thereto, have extensively developed them, and it is in the interest of justice that their proprietary rights in them are protected in accordance with the law.
6. The 1<sup>st</sup> applicant swore a supplementary affidavit on 10/11/2022 in support of the application.

### **Submissions**

7. The applicants accuse the petitioner of obtaining the grant by concealment of a material fact, failing to involve them, forging their signatures and distributing the estate in unfair and inequitable manner, by giving some children preference to others. They accuse the interested parties of perpetuating unlawful and illegal acts by purchasing part of the estate at their expense. They pray for the application to be allowed as prayed, and cite *Re Estate of the Late Epharus Nyambura Nduati (Deceased)* (2021) eKLR, *Dorcas Muthoni & 2 others v Michael Ireri Ngari* (2016) eKLR and *In the Matter of the Estate of Thomas Mbui Njenga Alias Thomas Nchege (Deceased)* Succession Cause No. 26 of 1988.
8. The petitioner and the interested parties urge that the right to ownership of land is protected under article 40 of *the Constitution*, and the interested parties are bonafide purchasers for value without notice. The petitioner urges that she provided for the beneficiaries, and the 1<sup>st</sup> applicant willingly denounced her share to the estate. The petitioner urges the court to disregard the baseless allegations by the applicants, as they were both present when the grant was being confirmed, but did not raise any issue. They rely on *Hannington Njuki v William Nyanzi* High Court civil Suit No. 434 of 1996 to support their submissions.



## Analysis and Determination

9. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant 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 order or allow; 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) that the grant has become useless and inoperative through subsequent circumstances.”
10. In his introductory letter dated 24/10/2012, the chief of Runogone Location, Kiathandi Division listed 13 beneficiaries of the deceased comprising of Charity Nkirote M’Ringera - wife, Joshua Kimathi - son, Violet Kendi – daughter, Beatrice Kathure - daughter, Fridah K. Ringera - daughter, Agnes K. Samson - daughter, Joseph Kiogora - son, Janet Karimi - daughter, Judith Ntinyari - daughter, Samuel Mburugu - son, Harriet Mwari (deceased), John Mubishi (deceased) and David Kathurima (deceased).
11. The petitioner listed those 13 beneficiaries in her affidavit in support of petition for letters of administration intestate. As per the certificate of confirmation of grant dated 29/9/2016, the estate properties were shared among the petitioner, Joshua Kimathi, Beatrice Kathure, Judith Ntinyari, Esther Nkirote, Samuel Mburugu, Denis Kithure and Yvonne Shakinah.
12. The record shows that Judith Ntinyari, Violet Kendi Ringeera and Fridah Kinya Ringeera wrote letters to court supporting the petitioner’s mode of distribution.
13. The claim by the 2<sup>nd</sup> applicant must fail because he was given 1 Acre of Ex-Lewa Settlement Scheme/227.
14. The petitioner contends that the 1<sup>st</sup> applicant willingly renounced her share of the estate properties. There is no evidence of such renunciation by the 1<sup>st</sup> applicant to support the petitioner’s assertion.
15. The petitioner admits having sold the resultant subdivisions of L.R Nos. Nyaki/kithoka-mwanika/50 being L.R Nos. Nyaki/kithoka-mwanika/391 and 364 to the interested parties. The court notes that



the order of inhibition sought is in respect to L.R No. Nyaki/kithoka-mwanika/392 measuring 0.43 Hectares, which is according to the official search on record still in the name of the petitioner.

16. It is undoubtedly clear that the 1<sup>st</sup> applicant ought to have been provided for as there is no evidence that she expressly renounced her right to inherit from the estate of her father.

### **Orders**

17. Accordingly, for the reasons set out above, the court finds that the application dated 2/9/2021 is merited and allows it to the extent set out below:

- a. An order of inhibition is hereby issued against L.R No. Nyaki/kithoka-mwanika/392 being a subdivision of L.R No. Nyaki/kithoka-mwanika/50 pending the hearing and determination of this cause.
- b. A rectified confirmed grant for the distribution of the estate assets shall be issued making provision for the 1<sup>st</sup> applicant.

18. There shall be no order as to costs.

Order accordingly.

**DATED AND DELIVERED ON THIS 6<sup>TH</sup> DAY OF APRIL, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances:**

M/S. Mutegi Mugambi & Co. Advocates for the Petitioner.

M/S Gikunda Anampiu & Co. Advocates for the Applicants.

M/S Kaumbi & Co. Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.

