



**In re Estate of Musa M’Amanja M’Birigwa (Deceased) (Succession Cause
241 of 2008) [2023] KEHC 20630 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 241 OF 2008
TW CHERERE, J
JULY 20, 2023
IN THE MATTER OF THE ESTATE OF MUSA M’AMANJA M’BIRIGWA
(DECEASED)**

BETWEEN

JENET NKIROTE MUSA PETITIONER

AND

JACOB MWITI MUSA 1ST APPLICANT

ALICE NKATHA 2ND APPLICANT

JOYCE MWARI 3RD APPLICANT

RULING

1. Musa M’Amanja M’Birigwa (Deceased) died sometimes on July 9, 1991. His estate comprised of LR Atubwete/Njohne/669, LR Atubwete/Njohne/1347, Plot Nos 1062, 3644 and 4457 Amwathi/Maua Adjudication Section.
2. Letters of Administration were issued on October 23, 2008 to Jenet Nkirote Musa (Respondent) in her capacity as widow of the deceased. Subsequently, the estate was distributed in terms of the Certificate of Confirmation of Grant dated July 20, 2017 which was subsequently Amended on July 5, 2022.
3. By summons dated February 13, 2023, Applicant’s in their capacity as children of deceased’s second wife Dorcas Cieruri pray that the grant be revoked for disinheriting them and for distributing part of the estate to a stranger one Justus Mithika. The application was further supported by James Mutethia Kathengu son of Jacob Kathengu son of deceased’s first wife Karema Musa who deposes that Respondent has distributed part of the estate to strangers and has disposed off part of LR Atubwete/Njohne/669 to one John Muthee Gathungu who has threatened the deponent with eviction.



4. Alice Nkatha, Justus Kaberia M'Mombasa, Zipporah Nkirote and Stanley Muriungi opposed the application mainly on the ground that Jacob Mwiti Musa is not son of deceased.
5. Prior to the hearing of the application, the parties on February 14, 2023 entered into a consent revoking the Letters of Administration issued to Janet Nkirote Musa on October 23, 2008 and appointing James Mutethia Kathengu, Justus Kaberia M'mombasa and Janet Nkirote Musa as joint administrators of the estate. The parties also agreed to stay implementation of the grant dated July 5, 2022 and directing the maintenance of status quo in terms of occupation, possession and use, over and in respect of LR No Antubetwe/Njohne/669, LR No Antubetwe/Njohne/1347/Amwathi/Maua/3644, LR No Amwathi/Maua/4457 and LR No Amwathi/Maua/1062 pending the hearing and determination of the application. It was additionally agreed that an order for inhibition be and is hereby granted restraining dealings in LR Nos Antubetwe/Njohne/669 Antubetwe/Njohne/1347, Amwathi/Maua/3644, Amwathi/Maua/4457 and Amwathi/Maua/1062 and John Muthee Kathengu was restrained from evicting James Muthethia Kathengu pending the hearing of the application for revocation dated February 13, 2023.

Applicant's Case

6. Applicant stated that he was a son of deceased's second wife Dorcas Cieruri and therefore a beneficiary to the estate. He faulted the Respondent for disinheriting him even though she had named him as son of deceased at the time of filing this cause. James Mutethia Kathengu son of Jacob Kathengu son of deceased's first wife Karema Musa stated that Applicant was deceased's son with his second wife Dorcas Cieruri. He faulted the Respondent for disinheriting him by disposing off part of LR Atubwete/Njohne/669 which he has been occupying for over 35 years to one John Muthee Gathungu who has threatened him with eviction.

Petitioner's Case

7. Petitioner conceded that deceased had three wives. She also conceded that the share for deceased's son Jacob Kathengu ought to be distributed to his children. Petitioner denied selling land to John Muthee Gathungu but admitted that she had instructed him to fence off part of LR Atubwete/Njohne/669 which the family of deceased's son Jacob Kathengu occupies. The witness was at pains to explain why she did not provide for Jacob Mwiti Musa whom she had named as son of deceased at the time of filing the suit or to justify why the estate was not distributed equitably to all the beneficiaries.
8. Justus Kaberia M'Mombasa, Alice Nkatha and Joyce Mwari stated that Jacob Mwiti was their maternal and not paternal brother. They argued that although he was brought up by deceased, he was not a beneficiary of the estate.

Analysis and determination

9. I have considered the application in the light of the affidavit and oral evidence on record and I have deduced the following issues for determination:
 1. Whether or not Jacob Mwiti Musa is a beneficiary of the estate
 2. Whether John Muthee Kathengu ought to be restrained from evicting James Muthethia Kathengu
 3. Whether the Certificate of Confirmation of Grant dated July 20, 2017 and Amended on July 5, 2022 ought to be revoked



4. In this cause, it has been conceded that Jacob Mwiti Musa is son of deceased's second wife Dorcas Cieruri and was brought up by the deceased during his childhood and only left home in adulthood to eke a living in Maua township. At the time of filing this cause, Jenet Nkirote Musa who is the deceased's 3rd wife filed a chief's letter dated March 5, 2008, affidavit in support of the cause and consent to the filing of the cause which contain the name of Jacob Mwiti Musa as one of the sons of the deceased.
5. Even if Jacob Mwiti Musa was a step child of the deceased, Section 29 of the [Law of Succession Act](#) Cap 160 Laws of Kenya (The Act) defines a dependent to include be step-children and children whom the deceased had taken into his family as his own as is the case with Jacob Mwiti Musa
6. Respondent and Jacob Mwiti's siblings failed to demonstrate to the court why they in the first place introduced Jacob Mwiti Musa to this cause as son of deceased if indeed he was a stranger. The fact of denying that Jacob Mwiti Musa is son of deceased without any tangible evidence is in my considered view not only pretentious but also unacceptable and it is rejected with the order that Jacob Mwiti was a dependent of the deceased and a beneficiary to his estate.
7. 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.”

10. Having as I have found hereinabove, that Jacob Mwiti Musa is a beneficiary of deceased’s estate, I find that Respondent obtained the grant herein fraudulently by the making of a false statement and by the concealment from the court of the fact that Jacob Mwiti Musa had not been provided for.
11. After obtaining the grant fraudulently, the Respondent not only distributed part of it to strangers but also disposed off part of the estate which has resulted in the rightful heirs being threatened with eviction. It should be remembered that no beneficiary has a better right to a deceased’s estate than the other. This court has a duty to ensure that the estate of the deceased in this matter is distributed equitably to all his beneficiaries and that strangers do not benefit from the estate at the expense of the rightful beneficiaries.
12. From the foregoing, the orders that commend to me and which I hereby issue are as follows:
 1. Jacob Mwiti Musa is a beneficiary of deceased’s estate
 2. Letters of administration shall issue to James Mutethia Kathengu, Justus Kaberia M’ombasa and Janet Nkirote Musa representing the 1st, 2nd and 3rd houses of the deceased respectively
 3. The administrators shall within 45 days of this order apply for confirmation of grant after identifying the respective shares of each beneficiary
 4. The *status quo* that obtained prior to the purported distribution conducted by the Petitioner/ Respondent shall remain pending the distribution of the estate
 5. Any subdivisions that may have obtained from any of deceased’s assets and any titles that may have emanated therefrom are hereby cancelled and an order is made reverting all the assets to the name of the deceased Musa M’Amanja M’Birigwa
 6. John Muthee Kathengu does not have a good title to LR Atubwete/Njoune/669 and he is permanently restrained from fencing off, threatening to evict or evicting James Muthethia Kathengu from the said land or any part thereof
 7. This cause shall be mentioned on March 16, 2023 to confirm compliance with these orders and for further orders and/or directions
 8. Costs shall be paid by the Petitioner/ Respondent

DATED AT MERU THIS 20th Day of July 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For 1st Applicant - Ms. Atieno for Mbumbuya for B.G.Kariuki & Co. Advocates

Respondent - Ms. Kimotho for Gichunge Muthuri & Co. Advocates

