



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late M'rimberia Kibichi (Deceased) (Succession Cause 669 of 2014) [2021] KEHC 453 (KLR) (9 June 2021) (Ruling)

Neutral citation: [2021] KEHC 453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 669 OF 2014
TW CHERERE, J
JUNE 9, 2021**

BETWEEN

JOHN MURUGU 1ST APPLICANT

MARTHA ITEGI M'IKIARA 2ND APPLICANT

AND

PETER MWONGERA RESPONDENT

RULING

1. By a Chamber Summons dated 24th February 2022 and filed on 01st March, 2022, the Interested Parties sought 7 prayers but only 3 remain for determination that; -
 - 1) The Honorable Court be pleased to grant leave to the Interested Parties herein to be joined as Interested Parties in these proceedings.
 - 2) The Honorable Court be pleased to issue order restraining the 2nd Respondent, his agents, employees or anyone acting on his behest from evicting, demolishing, fencing, entering or interfering with the quiet possession of all the beneficiaries as per the initial sub division of Land Reference Kibirichia/kibirichia/417
 - 3) That the costs of this Application be provided for
2. The application is founded on the grounds on its face of it and the supporting affidavit sworn by the 1st Interested Party on 24th February, 2022. He explains that the deceased's estate was subdivided in line with the conformed grant but some beneficiaries got 2 portions to cover for the developments that each beneficiary had made in their initial portions. They accuse the Respondents of colluding to obtain adverse court orders without notice to the other beneficiaries.
3. The Respondents opposed the application by way of Grounds of Opposition dated 10th May 2022 that:



1. The application has been overtaken by events as the order of 10th February 2022 has already been executed.
2. The application is vexatious and abuse of the due process of the law.
3. The applicant is seeking to return to an illegality and irregularity occasioned by doing subdivision which is contrary to the certificate of confirmation of grant.
4. I have considered the application in the light of the supporting affidavit, grounds of opposition and submissions filed by the Respondent.
5. Whereas the record demonstrates that M’Mwongela M’Rimberia (1st Administrator) was deceased as at 10th November, 2021 when the impugned orders were made, there is no evidence that the Applicants and other beneficiaries to the estate were made aware of the application dated 23rd June, 2021.
6. In *Msagha vs. Chief Justice & 7 Others* Nairobi HCMCA no. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553 stated as follows:

“The Court observes firstly that the rules of natural justice “audi alteram partem”, hear the other party, and no man/woman may be condemned unheard, are deeply rooted in the English common law and have been transplanted by reason of colonialization of the globe during the hey-days of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision...It is paramount at this juncture that this court establishes the ingredients and/or components of natural justice. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material.

7. The orders made 10th November, 2021 no doubt adversely affected the rights and interests of the Applicants without affording them an opportunity to be heard thereby violating their right and expectancy to be heard.
8. Consequently, I find that the Chamber Summons dated 24th February 2022 and filed on 01st March, 2022 has merit and it is allowed in the following terms:
 - 1) The Interested Parties are hereby enjoined as Interested Parties in these proceedings.
 - 2) The orders made 10th November, 2021 are hereby reviewed and set aside in their entirety
 - 3) The parties shall revert to the status quo that subsisted as at 10th November, 2021



- 4) Since the 1st Administrator is deceased and the 2nd Administrator is not actively involved in this matter, and considering the conduct of the Respondent herein, this court finds that it is in the interest of justice to appoint the Applicants as Administrators of the estate and it is so ordered
- 5) The administrators shall proceed with the distribution of the estate as by law required
- 6) Mention on 14th November, 2022 to confirm compliance of the foregoing orders.

DATED AT MERU THIS 09TH DAY OF JUNE 2021

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

Applicants - Mr. Mwirigi for Mwirigi & Nzomo Company Advocates

For Respondent - N/A for L.Kimathi Kiara & Co. Advocates

