



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 166 OF 1997**

**IN THE MATTER OF THE ESTATE OF DIONYSIUS MUTURUCHIU KINYUA (DECEASED)**

**JASPER M'ARIMBA NGUTARI.....PETITIONER**

**VERSUS**

**MERCY NYAWIRA KINYUA..... PROTESTOR**

**VICTOR MUTUIRI and JACQUELINE**

**NKIROTE GITONGA (Legal representatives**

**of the estate of GIDEON GITONGA**

**NKAABU (DECEASED)..... INTERESTED PARTIES**

**RULING**

1. On 6/12/2018, this Court delivered its Judgment whereby it held that **L.R. No. Abogeta/L. Kiungone/236 (“the said property”)** belonged to the protestor. The Court revoked the grant that had been issued to the petitioner.
2. In the proceedings, the protestor had intimated to Court that she had filed Succession proceedings in Nairobi in respect of the estate of the deceased. In this regard, the Court held that the said property be included as part of the estate in those proceedings and the protestor do inherit the same.
3. Pursuant thereto, the interested parties filed two applications. The first was dated 9/04/2019 which sought the production by the protestor of the alleged grant of Letters of administration intestate obtained at Nairobi or alternatively that fresh Letters of administration intestate of the deceased be issued to the protestor.
4. The second application was dated 29/10/2019 wherein the interested parties prayed for the review of the order directing the administration and distribution of the said property to be pursued in the Nairobi Succession Cause. They also prayed that a fresh letters of administration be issued to the protestor.
5. Both applications were supported by an affidavit sworn by **Victor Mutuiri**. He averred that his effort to trace the Succession file by the protestor in both the P & A registry and the Principal Registry at Nairobi have proved futile. That the said property is the only place they have known as home having been born and brought up there.
6. He further averred That they intend to pursue the ownership of the said property under the doctrine of adverse possession in an Environment and Land Court against the protestor. That in the premises, it will be necessary that there be a grant of letters of administration to the protestor.
7. The protestor opposed the application through her replying affidavit sworn on 5/2/2020, respectively. She denied having stated that she had filed a Succession cause in Nairobi as she already had a confirmed grant over the estate of her late father vide **Meru H.C. Succ. Cause No. 120 of 2015 (“the said Cause”)** that was issued on 15/5/2017.
8. She further stated that when she filed the said Cause, the estate property had already been taken away by the petitioner from the name of her late father. It had been transferred to the initial interested party. That it is for that reason that she did not include it in the said Cause.
9. The parties duly filed their respective submissions which the Court has carefully considered. It was the applicant’s submission that since the protestor had now produced a copy of the grant that had necessitated the instant application, the applicant’s interest has been served and

can now contest the ownership of the suit land in the appropriate forum.

10. The protestor submitted that she has already disclosed the grant she has and that the process of appeal against the judgment has already commenced. That in the premises, the applications are unwarranted.

11. The only issue for determination in both applications is whether the protestor should produce in these proceedings the alleged grant of letters of administration intestate obtained at Nairobi and whether the Judgment of 6/12/2018 should be reviewed.

12. At the trial, when the protestor was being cross-examined, she stated that: -

***“I have the grant for the estate of my late father i.e. Dionysius Muturichiu Kinyua in another Succession cause. I have the confirmed grant at Nairobi. I do not have the number. I have not filed them in this case....”***

13. It is because of the said assertion that this Court found that the protestor had filed a Succession Cause in Nairobi. The protestor has now explained that what she meant was the attached copy of the grant in the **Meru H.C. Succ. Cause No. 120 of 2015**.

14. The applicants have since conceded that their interest have been served by the filing of the copy of the grant in the said Cause. There is therefore no need to make any orders.

15. Accordingly, the applications are hereby struck out. Since the protestor had not produced the copy of the grant to prove that she is the administrator of the estate of the deceased, the applicants cannot be blamed for making the two applications. I will therefore make no order as to costs.

It is so ordered.

**DATED and DELIVERED at Meru this 9<sup>th</sup> day of July, 2020.**

**A. MABEYA**

**JUDGE**