



**REPUBLIC OF KENYA**

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

**MISC SUCC. NO. 7 OF 2015**

**(FORMERLY CHUKA CM'S COURT SUCC. CAUSE NO. 22 OF 2013)**

**IN THE MATTER OF THE ESTATE OF M'NKIRIA A RUGETI ALIAS NKIRIA MBIRO ALIAS NKIRIA RUGETI-  
(DECEASED)**

**AND**

**EVANGELINE CIAMBURA MUTEGLI.....1<sup>ST</sup> INTERESTED PARTY/APPLICANT**

**OSIRIA KATHOME MUTEGLI.....2<sup>ND</sup> INTERESTED PARTY/APPLICANT**

**VERSUS**

**EUSTACE BASKWALE NYAMU.....PETITIONER/RESPONDENT**

**R U L I N G**

1. This cause relates to the estate of the late M'Nkiria Mbiro alias M'Nkiria Rugeti (deceased) who died on 5<sup>th</sup> October 1993 resident at Kithangani Meru South (Now Tharaka Nithi County).
2. According to the petition for letters of administration filed, the deceased died intestate leaving the following surviving him namely:-
  - (i) Eustace Baskwale Nyamu
  - (ii) M'Ikithia Nkiria
  - (iii) Kenneth Micheni Njeru
3. The estate of the deceased as listed in the petition herein comprises the following properties namely:-
  - a) Karingani/Weru/266 and
  - b) Karingani/Weru/284
4. The petitioner herein was granted letters of administration on 6<sup>th</sup> June 2013 and later on 10<sup>th</sup> February, 2014 the grant was confirmed.
5. Evangeline Ciambura Mutegi and Osiria Kathome Mutegi, the applicants herein on 8<sup>th</sup> October 2015 took out summons for revocation of the said grant dated 21<sup>st</sup> September, 2015 seeking nullification of the said grant on the following grounds namely:-

***(i) That the trial magistrate lacked pecuniary jurisdiction under Section 48 of the Act to entertain the cause as the estate was worth more than Kshs.100,000/- .***

***(ii) That the Interested Parties were not involved in the succession proceedings.***

***(iii) That the proceedings to obtain was defective in substance and that the grant was obtained through fraud and concealment of material fact particular the fact that the Interested Party/applicants had purchased 2 acres out of Karingani/Weru/266 from the deceased and the fact that the applicants have been occupying that portion for almost 37 years.***

6. In their Supporting Affidavit done through the first applicant, have reiterated the above grounds. They contend that the two parcels of lands comprising the estate excluding developments are worth over Kshs.100,000/- and exhibited copies of green cards in respect to the parcels showing that the two parcels measures approximately 6 acres in total. They have further deposed that they purchased 2 acres out of Karingani/Weru/266, a fact they claimed was concealed from court. They have further deposed that they have been in occupation of the 2 acres for over 37 years.

7. The claims of purchase were repeated during trial with Osilia Kathome Mutegi (PW1) claiming that her claim together with the 1<sup>st</sup> applicant - a Co-wife is based on a purchase they did in 1978 from the deceased. She stated that the consideration then was in form of 2 cows and 3 goats. She recalled that their late husband gave out the 2 cows and the 3 goats. When challenged to show any documentary proof she claimed that there was no written document and that they were simply shown the parcel purchased and occupied it. She claimed that the houses constructed on the farm were burnt in April this year. She however could not tender any document to show that she had reported the incident to the police. She blamed the respondent for the arson.

8. The applicants' evidence was supported by Kanga Rucha (PW2) who told this court that he played a role in transaction between the deceased herein and Mutegi (deceased) - the husband to the applicants. He told this court that he brokered the deal between the two deceased persons and the total consideration agreed was Kshs.1000/- which was agreed to be in form of a cow and a calf valued at Kshs.700/- and 2 goats valued at Kshs.300/-. He further stated that he is the one who went and took the goats from the late Mutegi to the deceased herein. He could not however recall when the transaction took place. He further conceded that there was no written agreement as at that time agreements were not reduced to writing.

9. The respondent has opposed this application vide a Replying Affidavit sworn on 31<sup>st</sup> March 2017. The Respondent has termed the applicants strangers. He has deposed that the deceased had allowed them to plough the 2 acre parcel but denied that the portion had been purchased. He contended that prior to the demise of the deceased the applicants had been stopped from ploughing the portion and had in fact moved out of the estate.

10. The respondent testifying as DW1 told this court no one used to live in parcel No. Karingani/Weru/266 until 1985 when he took possession of the parcel. It was his evidence that he did not find the late Mutegi or any of the applicants therein.

11. This court has considered this application the evidence tendered and submissions tendered by both sides. There are 2 issues for determination in this matter which are as follows namely:-

(i) Whether the Interested Parties/applicants have a legal stake/interests on the estate.

(ii) Whether the lower court had jurisdiction to entertain the matter.

**(i) Whether the applicants have established legal interests on the estate.**

The evidence tendered in this matter by the applicants to prove their claims is oral and bereft of any documentary proof. That issue is not contested. I have considered the evidence tendered and apart from the oral evidence of PW2 the supposed witness to the transaction, the applicants case is really not supported by cogent evidence or facts. They were unable to table any evidence to show that they had taken occupation or proof that their houses were burnt down. There was no report from the police or the area chief to show that any such arson ever took place and whether any action was taken against any suspect. This court finds that the applicants have not discharged the onus of proving their case on a balance of probability.

12. In addition to the above it became apparent during trial that the applicants' claims hinged on their late husband's claim on the estate. This is because the applicants told this court that their late husband Mr. Mutegi purchased the 2 acre plot by paying the consideration in form of 2 cows and 3 goats. There was no evidence that the Interested Parties had taken out letters of administration for the estate of the late Mutegi for them to have capacity to take any action on behalf of his estate. This clearly shows that the applicant's claim by a dint of **Section 82** of the **Law of Succession Act** is unsustainable *ab initio*.

13. The other legal hurdle to the applicant's claim is the provision of **Section 6** of **Land Control Act** (Cap 302 of Laws of Kenya). There was no evidence presented before this court to show that the transaction was given green light by Land Control Board. The claim by the applicants' on the estate from whichever angle is unsustainable in law and this court finds it as such.

**(ii) Whether the lower court had jurisdiction to entertain the matter.**

14. It is quite apparent that looking at the size of the estate (over 6 acres) by a dint of **Section 48** of the **Law of Succession Act** the lower court clearly lacked pecuniary jurisdiction because as of 2013 when the grant was issued, the monetary jurisdiction of a Magistrate's court was capped at less than Kshs.100,000/-. The Chief Magistrate's Court lacked the requisite jurisdiction and under the provisions of **Section 76** of **Law of Succession Act** this court can at its own motion revoke a grant if any of the conditions thereunder obtains. I find that the grant was obtained due to inadvertent mistake by the Senior Resident Magistrate Hon. C.K. Obara because he had no jurisdiction to issue a grant over an estate whose monetary value was way above Kshs.100,000/- taking judicial notice of the value of land in Karingani Area. On this ground alone, the grant issued on 6<sup>th</sup> June 2013 is hereby revoked.

A fresh grant is hereby issued to Eustace Baskwale Nyamu under **Section 66** of the **Law of Succession Act**. I also in view of the age of this cause grant him liberty to apply for confirmation of grant before the expiry of statutory period. I shall make no order as to costs so each party to bear own costs.

**Dated, signed, and delivered at Chuka this 14<sup>th</sup> day of January, 2019.**

**R. K. LIMO**

**JUDGE**

**14/1/2019**

Ruling signed, dated and delivered in the open court in presence of Mugo for applicant, the Interested Party and Respondent in person.

**R.K. LIMO**

**JUDGE**

**14/1/2019**