



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
MISC. SUCCESSION CAUSE NO.13 OF 2015
(FORMERLY MERU SUCCESSION CAUSE NO.25 OF 2015)
IN THE MATTER OF THE ESTATE OF THE LATE M'MWIANDI MUSA (DECEASED)

AND

JAMES MURITHI MUSA.....PETITIONER/RESPONDENT

VERSUS

DORES KARIMI EDWARD.....1ST APPLICANT

RUTH KANYAMU MBIUKI.....2ND APPLICANT

LUCYLINE CIANKATHA.....3RD APPLICANT

EDITH CIAKUTHI.....4TH APPLICANT

JERIDAH MUSA.....5TH APPLICANT

DAVID MICHENI MUSA.....6TH APPLICANT

SAMSON MUTEMBEI MUSA.....7TH APPLICANT

MILLICENT NJERI.....8TH APPLICANT

DAVID MICHENI NJERU.....9TH APPLICANT

EDWIN MUCHIRI SAMWEL.....10TH APPLICANT

ERIC NJAGI SAMWEL.....11TH APPLICANT

R U L I N G

1. This cause relates to the estate of the late **M'MWIANDI MUSA NJIRU** who died intestate on 22nd October, 2004 at Chuka Hospital resident at Mugirirwa. The deceased died and left the following dependants surviving him namely:-

(i) Maritha Maitha Musa (widow)

(ii) David Micheni Njiru

(iii) James Murithi Musa

(iv) Samson Mutembei Musa

- (v) Eric Njagi Samuel
- (vi) Edwin Muchiri Samuel
- (vii) Estry Murugi Musa
- (viii) Evans Kithinji Musa

2. The property comprising the estate in this cause is listed as that property known as L.R Karingani/Mugirirwa/363. The petitioner in this cause James Murithi Musa was initially appointed the administrator of the estate in this cause on 25th May 2009. Later the grant was revoked because some beneficiaries had been locked out and a fresh grant issued on 7th June, 2016 to Ruth Kanyamu, Doris Karimi and James Murithi. Doris Karimi Edward through Summons for Confirmation of Grant dated 21st June 2016 applied for confirmation of grant. The application was later withdrawn after the applicant realized that she had prematurely moved the court. She later filed another application dated 29th May 2017 asking for confirmation of grant and this court confirmed the grant on 13th July, 2017 in terms of the following mode of distribution;

(A) **Karingani/Mugirirwa/363**

- (i) Ruth Kanambi Mbiuki - 50 points
- (ii) Jerida Ukima Ntima - 50 points
- (iii) Doris Karimi Edward - 56 points
- (iv) Edith Ciakuthi Mutwiri - 56 points
- (v) Lucyline Gakathia Mbuba - 56 points
- (vi) David Micheni Njeru - 56 points
- (vii) James Murithi Musa - 56 points
- (viii) Benson Mutembei Musa - 56 points
- (ix) Muchiri Kaburu - 56 points

3. The administratrix and administrator later found that the property comprising the estate had earlier been subdivided owing to a grant issued at the lower court that was later revoked. Upon realization of the same they filed an application dated 11th October, 2017 asking this court to order that all titles that resulted from subdivisions of Karingani/Mugirirwa/363 to wit parcels Nos. 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2491, 2492 and 2493 be cancelled and the parcels do revert to original parcel No.363 for purposes of distribution of the estate as per the confirmed grant issued on 17th July 2017.

4. At the same time, James Murithi Musa, aggrieved by the mode of distribution adopted by this court, applied through Summons for Revocation of Grant dated 4th December, 2017 to have the grant revoked and distribution be ordered a fresh. The grounds for his application are listed as follows:-

a) That the applicant and other children of the deceased are prejudiced by the mode of distribution.

b) That a wife of the deceased, namely Martha Maitha Musa was left out.

c) That the respondent would suffer no prejudice.

d) That the proceedings that led to the confirmation of grant was done without his consent.

5. In his Supporting Affidavit sworn on 4th December, 2017, James Murithi Musa, depones that the deceased herein was his father and left the following dependants:-

- (i) Martha Maitha Musa
- (ii) Jeridah Musa
- (iii) Edith Ciakuthi
- (iv) Lucyline Ciakuthi

- (v) David Micheni Njeru
- (vi) James Murithi Musa
- (vii) Samson Mutembei
- (viii) Edwin Michiri Samwel
- (ix) Doris Karimi Edward
- (x) Esther Murugi Musa &
- (xi) Eric Njagi

5. The applicant has further deposed that he was under the illusion that the grant herein had not been confirmed and was unaware of the date when it was confirmed. He further deposes that the mode of distribution was not fair as his own mother Martha Maitha Musa was left out in the distribution. He also accuses the administratrix for favouring strangers with shares in the estate.

6. At the hearing of this application the applicant testify as PW1 told this court that he was present in court on 13th July, 2017 when this court confirmed the grant and never raised his hand to protest and the proposed mode of distribution. He further confirmed that his mother, Martha Maitha was now deceased. He further told this court that everyone who benefited from the estate including himself have sold their shares and that the share remaining belongs to the sisters. He also testified that Rose Kagendo and Stella Murugi both daughters of the deceased are now deceased.

7. Doris Karimi, the administratrix respondent testified and opposed the Summons for Revocation of Grant brought in by James Murithi. She testified that the deceased was married to 3 wives and that the mode of distribution adopted catered for all the 3 houses and the children equally. Ruth Kanyamu (DW2) testified and supported the objection made by Doris claiming that James Murithi as an administrator from the 3rd house had not basis to complain as he was fully catered for in the distribution of the estate. The testimonies of the two objectors was supported by Samson Mutembei who is also a beneficiary. He told this court that the adopted mode of distribution was fair to all the children and faulted the applicant (James Murithi) stating that he was in support of the mode of distribution.

8. This court has considered the Summons for Revocation of Grant dated 4th December, 2017 and the application dated 11th October, 2017 brought by Doris Karimi Edward. I have considered all the affidavits made in support and in response to both applications.

9. To begin with the Summons for Revocation of Grant dated 4th December, 2017, the applicant's main ground for annulment of grant confirmed on 13th July, 2017 has really been overtaken by events. The applicant brought the application claiming that he was prejudiced because his mother Martha Maitha Musa was locked out. He also stated at the hearing that Esther Murugi and Rose Kagendo were not catered for but he admitted himself that the two were deceased as well. This court has looked at the mode of distribution as per the certificate of confirmation dated 17th July 2017 and it is apparent that all beneficiaries are equally catered for. The applicant claimed that some strangers benefitted from the distribution of the estate of the deceased herein but failed to table evidence to show or demonstrate who and how the "*stranger*" had benefitted. This court have considered the response made by the other children of the deceased really finds no basis for the Summons for Revocation of Grant dated 12th April, 2017. The same lacks in merit and cannot be sustained. For that reason the same is dismissed.

10. I have looked at the application dated 11th October, 2017 which is basically seeking to cancel the resultant titles which resulted from subdivisions of parcel No. Karingani/Mugirirwa/363. It is quite clear that this court the grant issued on 25th May, 2009 in the lower court (which grant had resulted in subdivisions of the estate with a view to distribute the same) was nullified by this court on 2nd June, 2016 by consent of all the parties. With that revocation of grant any subdivision resulting from the revoked grant stood nullified and the Registrar of Land should have cancelled all the subdivisions and revert back the properties to mother title parcel No. 363.

In the premises this finds merit in the application dated 11th October, 2017. the same is allowed as prayed. I make no order as to costs.

Dated, signed and delivered at Chuka this 4th day of February 2019.

R.K. LIMO

JUDGE

4/2/2019

Ruling signed, dated and delivered in open court in presence of James Murithi and Samson Mutembei.

R.K. LIMO

JUDGE

