



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 639 OF 2011

IN THE MATTER OF THE ESTATE OF KABURUKI KIRUJA Alias KABURUKI M'KIRUJA

M'ANAMPIU KABURUKI.....PETITIONER/RESPONDENT

VERSUS

GERALD KINYURU KABURUKI.....OBJECTOR/APPLICANT

R U L I N G

1. **Kaburuki Kiruja Alias Kaburuki M'Kiruja ("the deceased")** died on 7th June, 1993. The grant was issued to the petitioner on 11th April, 2012 and confirmed on 5th February, 2013. The petitioner applied for the same to be rectified which application was allowed on 27th May, 2014 as follows:-

Abothuguchi/Kariene/1617

M'Anampiu Kaburuki	-	1.15 Acres
Angelo Kaburuki	-	1.00 Acre
Gerald Kinyuri Kaburu	-	1.00 Acre.

2. The record shows that when the application for rectification was heard, only two of the three sons of the deceased were present in court. **Gerald Kinyuri Kaburuki**, the objector, was absent. The distribution of the other property **Abothuguchi/Igane/970** remained undisturbed having been distributed to **M'Anampiu Kaburuki and Gerald Kinyuri Kaburuki**.

3. **Gerald Kinyuri Kaburuki** has since filed an application dated 29th October, 2018 seeking for the revocation of the grant. The basis of the application is that the rectified grant has errors on the mode of distribution as the measurement units of the estate property were in acres instead of hectares. He averred that each beneficiary ought to get 1.05 ha from **Abothuguchi/Kariene/1617** which measures 3.15 hectares. He produced a certificate of search dated 4th September, 2018 which clearly showed that the area of **Abothuguchi/Kariene/1617** was clearly 3.15 ha and not 3.15 acres as had been represented by the petitioner.

4. The application was opposed by the petitioner through his replying affidavit sworn on 22nd November, 2011. He stated that an official search of the copy of records showed that the land measured 3.15 acres and not 3.15 ha. That the beneficiaries of the estate had granted him 0.15 points because he is the one who catered for the legal fees in the succession cause. That the beneficiaries had met at the offices of Ndorongo & Company, Advocates and agreed to the distribution.

5. The objector filed a further affidavit in response to the petitioner's affidavit wherein he denied the averments in the petitioner's affidavit. He contended that the petitioner had concealed the process of rectification and contended that they had not agreed to the petitioner taking a bigger share than the rest.

6. Although the parties were directed to file their respective submissions, none filed. The petition for letters of administration listed the following as survivors of the estate i.e. **M'Anampiu Kaburuki, Angelo Kaburuki, Gerald Kinyuri Kaburuki and Kigorwe M'Ajogi Alias Zipporah Kigorwe M'Ajogi**.

7. In the application for confirmation of grant dated 25th October 2012, the petitioner presented a consent that showed that all the beneficiaries had signed the same. Both the application for confirmation and rectification thereof were heard in the absence of the objector and the daughter of the deceased.

8. The petition was lodged together with a copy of a search which showed that the acreage of **Abothuguchi/Kariene/1617** was 3.15 acres. In the application for revocation, the objector produced a copy of a search which showed the acreage to be 3.15 ha. I would have expected the petitioner, as the administrator of the estate, instead of disputing the acreage as presented by the objector, to produce either another search to dispute the objector's position or a copy of the records. I doubt his honesty.

9. I note that the daughter of the deceased, **Zipporah Kigorwe M'Ajogi** was never given any share and there is no evidence that she had renounced her interest in the estate. Having determined that it was not proved that the objector and the other beneficiaries were agreeable to the mode of distribution, I am doubtful if the daughter of the deceased likewise signed the consent.

10. The deceased died intestate leaving behind children. The estate should therefore be distributed in accordance with **section 38 of the Law of Succession Act** which provides:-

“38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children”.

11. Accordingly, before I make the final orders, I will require the attendance of the Land Registrar in-charge of the area the estate property is situate. I will also require all the beneficiaries of the estate to attend court on the day the registrar attends court for final orders.

12. The Land Registrar, Meru is hereby directed to appear in court with the original and certified copies of the record for the property known as **Abothuguchi/Kariene/1617**.

13. The costs will await the confirmation by the Land Registrar as to the acreage of the subject property.

DATED and DELIVERED at Meru this 2nd day of May, 2019.

A. MABEYA

JUDGE