



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 703 OF 2013

IN THE MATTER OF THE ESTATE OF M'MUGAMBI M'MBUI

NAOMI NCOGA RUKARIA..... 1ST APPLICANT

PHYUS GATIRIA MBURUGU.....2ND APPLICANT

MONICA NKIROTE M'KIIRIA..... 3RD APPLICANT

VERSUS

JACKSON KIAMBI MUGAMBI..... PETITIONER

R U L I N G

1. **M'Mugambi M'Mbui** ("the deceased") filed **Succession Cause No. 118 of 1992 In the matter of the Estate of Mbijiwe Mbui** on 30th July, 1992. In that Cause, he sought to succeed the estate of his brother the late **Mbijiwe Mbui** who had died intestate 1967 without a wife or child.
2. The applicants herein are sisters to both the deceased in this case and the deceased in the said **Succession Cause No. 118 of 1992**.
3. The deceased herein was granted the whole share of the estate of his aforesaid late brother i.e. **Abothuguchi/ Mariene/62** measuring 0.70 ha vide Certificate of Confirmation of grant issued on 8th May 1995.
4. By an application dated 20th November 2018, the applicants sought the consolidation of **Succession Cause No. 118 of 1992 In the matter of the Estate of Mbijiwe Mbui** with this cause and the revocation of the grant herein.
5. The application was supported by the affidavit of **Naomi Ncoga Rukara**. She averred that the applicants were not aware of Succession Cause No. 118 of 1992 and that parcel No. **Abothuguchi/Mariene/62** was held in their trust. That the applicants have been residing in the aforesaid parcel and are therefore entitled to the same.
6. The application was opposed vide the replying affidavit of the petitioner sworn on 8th April, 2019. He denied the allegations of the applicants and stated that the applicants should have applied for the necessary orders in the aforesaid **Succession Cause No. 118 of 1992**. That the application was being made too late in the day as the property has since been sold to the Methodist Church.
7. This succession cause relates to the estate of **M'Mugambi M'Mbui**. On 23rd October, 2014, this Court distributed the estate of the deceased comprising of **Abothuguchi/ Mariene/62** to the petitioner. It would seem that he immediately thereafter sold it to the Methodist Church which was registered as the owner thereof on 21st August, 2015.
8. I have perused and considered the proceedings in **Succession Cause No. 118 of 1992 In the matter of the Estate of Mbijiwe Mbui**. I have also considered the submissions made by both parties in this matter.
9. The record in the said **Succession Cause No. 118 of 1992** shows that the deceased therein passed on in the year 1967. That he left no wife nor child and/or children and left **Abothuguchi/Kariene/62** as the only property forming his estate. That Cause was concluded in May, 1995 and the estate administered fully.
10. I agree that the applicants, as sisters of the deceased, ought to have been involved in the said succession cause. However, taking into consideration that their brother in that Cause died over 40 years ago and they never bothered to apply to succeed him, it is too late for them now to wake up, and seek to consolidate this matter with the aforesaid Cause. That Cause was concluded 24 years ago!

11. To my mind, 24 years is too long a period to re-open the said Cause by consolidating it with this cause. There was no prayer in the application for leave to extend time within which to lodge an objection. Even if there was, I would not have granted the same as the delay had been inordinate and had not been explained.

12. In any event, I do not think that it would be proper to make orders in this Cause affecting the aforesaid Cause which has been fully determined on merit. The pronounced silence by the applicants to the extent that rights of 3rd parties, the Methodist Church, have inured denies this court the discretion of looking at the applicants with any favour.

13. As regards the claim of trust, there was no evidence to suggest that the deceased in this case was registered as owner of the subject property in trust for the applicants. There being no satisfactory evidence of any existence of trust, the applicant's claim fails.

14. The totality of the foregoing is that the applicants' application dated 20th November, 2018 is without merit and the same is hereby dismissed.

15. This being a family matter each party shall bear own costs.

It is so ordered.

DATED and DELIVERED at Meru this 6th day of June, 2019.

A. MABEYA

JUDGE