



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

**SUCCESSION NO. 384 OF 2002**

**IN THE MATTER OF THE ESTATE OF NURU**

**KINOTI ALI ALIAS NOORU NURU ALI (DCD)**

**HASSAN NURU.....PETITIONER**

**VS**

**ZAINABU MWARI.....1<sup>ST</sup> INTERESTED PARTY**

**JACOB KINOTI NURU.....2<sup>ND</sup> INTERESTED PARTY**

**SALIMA NURU.....3<sup>RD</sup> INTERESTED PARTY**

**IDRIS NURU.....4<sup>TH</sup> INTERESTED PARTY**

**ABDI NURU.....5<sup>TH</sup> INTERESTED PARTY**

**YASMIN KENDI NURU.....6<sup>TH</sup> INTERESTED PARTY**

**JUDGEMENT**

Summons dated 20.3.2015 was filed by Applicants/Interested parties seeking for orders of inhibition to issue restraining registration of dealings in L.R. Nos Ntima/Ntakira/1802 and 1803 pending hearing and determination of the application;

That the charge registered against L.R.Ntima/Ntakira/1803 in favour of Meru Trade Development Joint Board on 22.8.2014 be discharged.

That the Certificate of Confirmation of Grant issued to Nuru Murithi Hassan alias Hassan Nuru on 31<sup>st</sup> January 2008 and 18<sup>th</sup> December 2003 respectively be revoked;

The application was supported by the grounds on the face of the application and supporting affidavit of Jacob Kinoti Nuru to the effect the grant was obtained fraudulently by the making of false statements and by the concealment from the court of material facts to the cause;

That grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant.

The applicant averred that the Respondent lodged 2 succession causes in respect to Nooru Ali who died on 29.6.98 in cause no. 384 of 2002 and M<sup>o</sup>Nkanata s/o Mboroki who died 9<sup>th</sup> December 1984 in succession cause no. 428 of 2006 secretly without consent of all the beneficiaries including himself and Idris Nuru.

That the Respondent used forged certificates of death to institute the succession causes.

That the Respondent failed to include L.R. No. Ntima/Ntakira/1803 in the schedule as assets despite the same being property to Nooru Ali.

That the Respondent distributed L.R. Ntima/Ntakira 1802 to himself and a stranger to the estate despite certificate of confirmation of grant issued on 18<sup>th</sup> December 2003 indicating otherwise.

That the 1<sup>st</sup> Respondent failed to disclose that the family of M’Nkanata M’Mboroko had relinquished their share in L.R. Ntima/Ntakira/1802 to the family of Nooru Ali alias Nuru Kinoti Ali owing to transactions conducted by the 2 deceased persons prior to their demises per JKNV

That curiously on 22.8.2014 an entity by the name Meru. Trade Development Joint Board was able to obtain an interest in L.R. No. Ntima/Ntakira/1803 by having a charge of Kshs 50,000/= registered in its favour whereas the registered owner thereof had died 16 years ago JKA IV.

The applicant sought that grants issued to 1<sup>st</sup> Respondent herein be revoked in respect of both estates and be redistributed. When petition for letters of Administration to the estate of Nooru Ali was lodged by the 1<sup>st</sup> Respondent herein the assets that appears to have been cited as forming the estate is Ntima/Ntakira/1802; 1803 & 1808 measuring 0.046 Ha and in affidavit sworn by 1<sup>st</sup> Respondent on 26<sup>th</sup> September 2003 it is indicated that Eutyclus Muthui had purchases interest in the property. This particular property as at the time the petition was lodged indicated that land certificate was issued on 21.4.1976 whereas it was registered on 26<sup>th</sup> March 1986 in the joint names with equal ½ share each.

The deceased was survived by:-

- Mariam Nuru – widow
- Hassan Nuru – son 28
- Jacob M. Nuru – son 32
- Mzee Ali – son 36
- Yasmin Nuru –son 24
- Zawah Karimi -26
- Raziah Nuru – 42
- Daud Yusuf – 40 years
- Eutyclus Muthui – purchased of 60 x 90 from 1802.

Grant was made on 26.2.2003 and confirmed 428/06.

Deceased M’Nkanata s/o M’Mboroki

Petitioner – Nuru Murithi – Nephew to Hassan deceased.

Asset – Ntima/Ntakira/1802

Objection raised by Erastus Muthuri Mboroki but withdraw on 7.5.2017.

Grant made on 2.7.2007

Nuru Murithi Hassan and Erastus Muthuri Mboroki indicated as beneficiaries. Grant confirmed on 29.1.2008.

Zainabu Mwari Nuru applied of revocation of grant on 12.2.2008 as interested party and said Respondent was not the only beneficiary.

Respondent used fraudulent means to justify grant and forged crucial documents to achieve his ill intentions including certificate of death in which he said deceased died at Chogoria Hospital when he died at Meru General Hospital. He thus relied on a photocopy of forged certificate.

That the chief never wrote a letter in regard to the estate of M’Nkanata s/o M’Mboroki.

That Respondent received consideration from Erastus Muthuri and was in process of transferring L.R. 1802 and thus will disinherit the legal beneficiaries.

Hassan M’Nuru in reply to application dated 20.3.3015 averred that a similar application was made dated 28.6.2010 and it was compromised by the parties after arriving to a consensus and the current application is a replica of the earlier one and he had instructions from his counsel to raise a preliminary objection that it is res judicata.

He averred that applicants are mere busy bodies who always make applications to waste precious court time even when they know the applications have no merit.

He submitted that applicants have always been aware of the proceedings and should not complain;

He said what is remaining in the file is distribution of estate to the beneficiaries and the applicants already know their share and there was no need of placing inhibition on the title as land is still in the names of the deceased and no one has dispose it.

The interested parties/Applicants Jacob Kinoti Nuru and Idris Nuru filed their submissions in support of application to revoke and/or annul grants made to Respondent or succession causes No. 428 of 2006 and 384 of 2002 for reasons supporting application depict the 1<sup>st</sup> Respondent as dishonest and he obtain grant irregularly. It was argued that the Respondent had acknowledged the beneficial interest of the applicants and has only presented a feeble defence to the applicants claim. It was proposed that upon revocation and/or annulment of grant Zainabu Mwari and Jacob Kinoti Nuru should be appointed as administrators as family of M’Nkanata s/o M’Mboroki and relinquished their claim.

The Petitioners counsel in submissions said that L.R. No. Ntima/Ntakira/0.046 which applicants want to be included as beneficiaries is tiny and can’t be sub divided further.

That all the deceased dependants live on that land and it is not true that the Respondent was unlikely to abide by the commitment to distribute the estate. The Respondent said he filed cause with full knowledge of the beneficiaries of the deceased.

That applicant was given land in Majengo No. 78 by the deceased prior to his death but all the same she was still considered in the distribution of estate comprised of L.R.Ntima/Ntakira/1802 and there is no ground for revoking grant as there is no sufficient ground shown.

Certificate of search obtained by DR in respect of L.R.Ntima/Ntakira/1802 is now registered in the name of Hassan Nuru and M’Nkanata s/o Mboroki who died on 28.6.1998. The search shows Respondent and the said deceased were registered as proprietors in common on 29.12.2003 and yet in the initial search issued on 29.9.2003 Nooru Ali and M’Nkanata s/o M’Mboroki were registered as proprietors on 26.3.1976.

The Respondent has said that the land is still in the name of the deceased and yet that is not true. In the succession cause No. 428 of 2006 the certificate of confirmation shows he and Erastus Muthuuri Mboroki are to share this particular parcel equally as beneficiaries.

The Respondent didn’t say anything about the family of the Late M’Nkanata relinquishing their rights as claimed by the applicant.

This same land in Succession Cause No. 384 of 2002 has been distributed to Eutyclus Muthui 60 x 90 and balance to be shared equally among the deceased beneficiaries.

The Respondent has not indicated what the balance of L.R. 1802 is after Eutyclus Muthui gets his 60 x 90 and what is due to each beneficiary.

Finally there are other assets in succession cause no. 384 of 2002 which were not distributed and it is not explained what happens to them starting with Ntima/Ntakira/1803 –DR obtained search and it shows that it was registered in the name of Nooru Ali on 18<sup>th</sup> March 1974 but on 22.8.2014 despite the fact that it was not distributed to beneficiaries a charge of Kshs 50,000/= is lodged against it in the registry.

It is not indicated to whose benefit the charge was lodged. That is a nullity ab initio and same should be cancelled forthwith Meru Trade Development Joint Board was served but no appearance was entered on their behalf.

Further schedule of Assets also showed that Ntima/Ntakira/1808 measuring 100 x 100 and L.R.No. Kionjo/859 measuring 2.5 Ha was also part of the deceased Nooru Ali’s estate but there is no mention of the same.

Consequently this court finds that the 1<sup>st</sup> Respondent has jumbled up these 2 estates and he cannot be trusted to administer fully, fairly and in a just manner.

The letters of grant made to the 1<sup>st</sup> Respondent in succession cause no. 384 of 2002 and no. 428 of 2006 and are therefore revoked and/or annulled and any transactions arising there from are void ab initio.

Orders of inhibition to remain in force in L.R. Ntima/Ntakira/1802, 1803 and 1808 as well as L.R. Kionyo 859.

This court appoints Zainabu Mwari Nuru and Jacob Kinoti Nuru as joint administrators in the estates of Nooru Ali in cause No 384 of 2002 and the Late M’Nkanata s/o M’Mboroki in cause no. 428 of 2006. The 2 joint administrators should file application for confirmation of grant immediately but not later than 21 days from today’s date. The 1<sup>st</sup> Respondent will bear the costs of the application dated 20<sup>th</sup> March 2015.

**HON A.ONG’INJO**

**JUDGE**

**Ruling delivered, dated and signed in court this 1<sup>st</sup> Day**

**of March 2018.**

**In the presence of:-**

Petitioner: Mr Kimathi & Mr Otieno C for Petitioner Respondent

Interested Party: Mr Mwiti Advocate holding brief for Mark Murithi for Applicant/Objector

**HON A.ONG'INJO**

**JUDGE**

**Mr Mwiti Advocate**

We pray to be supplied with copy of ruling we shall pay charges.

**Order**

Copy of ruling to be supplied upon payment of copying charges. Objectors counsel to notify Respondents counsel.

M. 28.6.2018 to confirm application for confirmation filed and Response by Respondent to submissions.

**HON A.ONG'INJO**

**JUDGE**