



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 640 OF 2012**

**IN THE MATTER OF ESTATE OF THE LATE M' IMANYARA MBAYE alias IMANYARA S/O MBAE (DECEASED)**

**JAMES L. KABURU MANYARA.....PETITIONER**

**-VS-**

**ISABELLA MUTHONI KAMORE.....1<sup>ST</sup> PROTESTOR**

**NTHIRA M' IMANYARA.....2<sup>ND</sup> PROTESTOR**

**AND**

**JOHN MBAYA MUKETHA..APPLICANT/ INTRESTED PARTY**

**R U L I N G**

1. M'Imanyara M'Inio alias Imanyara Inio (deceased) died on 5<sup>th</sup> August, 1978. On 25<sup>th</sup> March 2013, a Grant was issued to the **James L. Kaburu Manyara ("the petitioner")**. On 15<sup>th</sup> May 2017, the beneficiaries agreed that the estate be distributed as follows:-

**a) ABOTHUGUCHI/GITHONGO/314**

- i) James L. Kaburu Manyara**
- ii) M' Riberia M' Manyara - Equally**

**b) ABOTHUGUCHI/KITHURINE/984**

- i) Nthiira M' Rukaria-1.55 Acres**
- ii) Jacob Mwiti Ikiara**
- iii) Julius Mbaabu Ikiara-1.45 Acres in equal shares.**

3. The record shows that at the time the said consent was being recorded, the following beneficiaries were present in court:-

- a) Nthiira M' Ruria**
- b) Isabella Muthoni**
- c) Geoffrey Muriungi**
- d) John Kirimi**
- e) Margaret Kanyiri**
- f) Mercy Kajuju**

**g) Henry Mutuma**

**h) Agnes Nkirote**

**i) Alexander Guantai**

**j) Julius Mbaabu**

**k) James Kaburu**

**l) M'riberia M'Imanyara**

4. By Summons for Revocation/Annulment of Grant brought pursuant to **Sections 47 and 76 of the Law of Succession Act, and Rules 44 and 73 of the Probate and Administration Rules**, the Interested Party has sought an order that the confirmed be revoked and a fresh one be issued with the interested party as the beneficiary of **Land Parcel No. Abothuguchi/Githongo/315 (sic)** on the ground that the same belonged to his late grandmother and a sister to the deceased one **Mariam Nthang'a alias Ciombae** (deceased).

5. The application is supported by the grounds on the face of it and an affidavit sworn by the interested party. These were that the deceased was a brother to his late grandmother. That his late grandmother bought land parcel number **ABOTHUGUCHI/GITHONGO/314** before adjudication; that since at that time women did not have identification documents, the property was registered in the name of the deceased. That to-date, he is in full control of the property and the deceased's descendants only had title to the land which the deceased refused to transfer to grandmother. That he only got wind of this cause when potential buyers started asking about the property.

6. The application was opposed via a replying affidavit sworn by the petitioner on 14<sup>th</sup> July 2018. He deposed, *inter alia*, that the applicant was a stranger to the estate of his deceased father and therefore not entitled to the subject property; that at no time did his father's sister seek transfer of the land from him. That, Mariam had another daughter, Alice Gakura who has never staked a claim on their father's land and that the applicant was present at both Githongo and Kibirichia chief camps when they sought to be issued with the letter of introduction and the applicant was advised that his name could not be included in the chief's letter as he was not a dependant of the deceased.

7. When the matter came up for hearing on 24<sup>th</sup> September 2018, the court directed the parties to file written submissions within specified timelines. However, as at the time of writing this ruling, none of the parties had filed any submissions.

8. I have carefully considered the affidavits on record. Although the interested party referred to **LR. No. Abothuguchi/Githongo/315 and Abothuguchi/Githongo/314**, inter-changeably, he must have been referring to **Abothuguchi/Githongo/314**.

9. The circumstances under which a grant is to be revoked are set out in **section 76 of the Act**. These include that the grant was obtained fraudulently by the making of a false statement or concealment of something material; that the grant was obtained by making untrue allegation of fact essential on a point of law; that the proceedings were defective in substance or that there was no notice to a beneficiary. **(See Nyaga Cottolengo Francis vs. Pius Mwaniki Karani [2017] eKLR).**

10. In this case, the applicant's case is that the subject property was purchased by his grandmother one **Mariam Nthang'a** from one **Rwara** way back in the 1950s. That because at the time, women had no personal registration documents, the property was registered in the name of the deceased on her behalf. That after her demise, her daughter **Elizabeth Mukami**, instituted **Meru Central District Land Dispute Case No. 52 of 1999** against the petitioner and his brother. That the award was in her favour which was subsequently recorded in **Meru CMs Court Land Dispute No. 6 of 2000**.

11. Notwithstanding the said allegations, there was no evidence of the applicant's grandmother having purchased the property as alleged. Further, there was no evidence that the decree emanating from **Meru CMs Court Land Dispute No. 6 of 2000** was ever executed. It is now 18 years after the award was read as a judgment of the court. If the decree have not been executed, it must have been caught up by limitation of time by now.

12. In any event, there was no evidence that the applicant was a personal representative of the aforesaid Elizabeth Mukami and therefore entitled to bring the proceedings on behalf of her estate. Further, the petitioner's averment that the Land Tribunal's award that the applicant was relying on was appealed against at Embu and was overturned. This contention was not denied by that. The applicant did not also deny that he had been at the two named chiefs camps when he was told that his name could not be included in the Chief's introduction letter. He was therefore aware of these proceedings from the beginning.

13. The applicant has not proved any of the instances set out in **section 76 of the Act** to warrant the revocation sought. Accordingly, I find the application to be devoid of merit and same is hereby dismissed. The orders made on 20<sup>th</sup> June, 2018 are hereby vacated and discharged.

14. Since the applicant was but a busy body, I will award the costs to the petitioner.

**DATED and DELIVERED at Meru this 1<sup>st</sup> day of November, 2018.**

**A. MABEYA**

**JUDGE**