



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 134 OF 2005

IN THE MATTER OF THE ESTATE OF M'MAERIA M'LIKAIBUA ALIAS STAVANO M'MERIA M'LIKABUA

ISAIAH IRUKIPETITIONER

VERSUS

ISAAC MUTHINE STAFANOPROTESTOR

J U D G M E N T

1. **M'MAERIA M'LIKAIBUA ("the deceased")**, is said to have either died on 11th February, 1997 or 31st July, 1996. He hailed from Antubeiga Location. On 8th April, 2005, the Assistant Chief of Burieruri sub-location wrote a letter of introduction in where he introduced Isaiah **Iruki (the petitioner)** as the deceased's son. That letter showed that the deceased was survived by the petitioner and the widow **Ciomatau Ntomura**.
2. Pursuant thereto, on 18th April, 2005, the petitioner petitioned for the letters of administration. In **Form P&A 5**, he stated that the deceased was only survived by **Ciomatau Ntomura** (widow) and the petitioner. He disclosed **L.R. NO. NJIA/BURIE-RU-RI/792** as the only asset forming the estate of the deceased.
3. On 11th June, 2008, a grant of letters of administration intestate was issued to the petitioner and was confirmed on 18th December 2008. The entire estate was distributed to the petitioner.
4. On 30th July, 2009, the D.C.I.O Meru North wrote to the court stating that he had received a complaint from Isaack Muthine in relation to a forged death certificate of his father which was used to file this Cause.
5. On 19th August, 2009, **Isaac Muthine Stavano (the applicant)** filed a summons for the revocation of the grant that had been issued to the petitioner. He contended that the petitioner had no relationship whatsoever with the deceased; that the petitioner had fraudulently, secretly and stealthily applied for the letters of administration for the estate of the deceased. That he only became aware of these proceedings when he received a letter from the petitioner's advocates ordering him and his sister to vacate their ancestral home.
6. He stated that the deceased had only one wife, Monica Nkatha M'Maeria who died in the year 2005. That the deceased was only survived two children, namely, Catherine Chabani Stafano and the Applicant. He urged the court to revoke the grant.
7. The petitioner opposed the application vide his replying affidavit sworn on 26th October 2009. He deponed that he had no relationship with the applicant. That his deceased father was known as **M'MAERIA M'LIKABUA** whereas the father of the applicant was known as **STEVANO M'MAERIA M'LIKABUA**. That the two deceased persons had no relationship save for the resemblance of names. He denied having obtained the grant fraudulently.
8. The matter was determined through *viva voce* evidence with the applicant calling 4 witnesses. **PW1 was Isaac Muthine Stefano**, the applicant. He reiterated what he had stated in his affidavits. He testified that when he received the notice to vacate from the estate property, he proceeded to Maua CID offices to investigate how the land may have been transferred. The CID took action and arrested the petitioner and charged him with the offence of fraud before the Maua Law Courts.
9. **PW1** further told the court that the petitioner was the son of M'Imula and his mother was Ciomatau M'Imula who was alive. According to him, his father's full name was Stavano M'Maeria M'Likaibua. He did not know what names of his father was appearing on the title. That he and his sister Catherine Chabari had been in quiet occupation of the estate property throughout their life and that the deceased's remains had been interred thereon.
10. He told the court that his father died on 31st July, 1996 as per death certificate No. 86283. That death certificate presented by the

petitioner as No. 85504 was a forgery and it showed that the deceased died on 11th February 1997. Moreover, he had since petitioned for grant of letters of administration at Maua Law Courts for the estate of his deceased father.

11. **PW2 Peter Kabua M'Mugambi**, born in 1930 and an age mate of the deceased testified that he knew both the petitioner and the applicant. That the applicant was the son of the deceased and one Nkatha while the petitioner was the son of his uncle and neighbor, M'Imula whose wife was Ciomatau. That the latter was still alive.

12. **PW3 Isaya Mungathia** a grandson of the deceased who resided 80 meters from the deceased's property testified that the applicant was the son of the deceased. That the applicant and his sister had been residing on the estate property throughout the time he knew them. That the deceased died on 31st July, 1996 and was buried on the subject land.

13. **PW4 Eliud Matindi** testified that the deceased was his uncle. He only knew him by the name M'Meria and not Stavano M'Maeria. That Ciomatau was the deceased's 3rd wife and that the estate property measures about 0.73 acres.

14. **RW1 Isaiah Iruki**, the petitioner, testified that his father was known as M'Maeria M'Likaibua. He did not know who Stavano M'Maeria M'Likabua was. That his father's land measures 0.21 ha and he was not aware of the land measuring 0.73 ha. That the applicant and his sister live on the estate falsely but he had since given them notice to vacate. He confirmed that this matter had been investigated and there was a criminal case ongoing in Maua Cr. Case No. 3444 of 2009 against him. That judgment in that case was scheduled for 15th November, 2018.

15. **RW2 Ayub Muroki M'Ikiyu** testified that he was a cousin to the petitioner because the deceased, M'Maeria M'Likaibua was a brother to his father. That the deceased had sisters by the name of Kairo and Ciomatau. That the petitioner was a child of his father's sister, Ciomatau.

16. The applicant filed submissions which this court has carefully considered. The issue for determination is ***whether the petitioner was a child of the deceased and whether the grant should be revoked.***

17. The revocation of grants is provided for under ***section 76 of the Law of Succession Act.*** The applicant stated that the petitioner was a stranger to the estate but had succeeded to obtain the grant secretly and fraudulently. That the deceased was married to one Nkatha and they got only two children, himself and his sister Catharini Chabane Stafano.

18. He testified that he and his said sister have at all times lived on the estate land wherein their father, the deceased was buried. His witnesses supported his testimony as to the date of the deceased's demise, their occupation of the estate property and that the petitioner was a stranger to the estate.

19. The petitioner's answer was that the deceased was his father and his name was **M'Maeri M'Likaibua** while the applicant's father was Stavano M'Maeria M'Likaibua. He admitted that he had been charged with forging the death certificate that initiated these proceedings but the case was still pending at Maua Court.

20. One thing is clear, **M'Maeri M'Likaibua** and **Stavano M'Maeri M'Likaibua** must be one and the same person. The petitioner did not deny the following allegations: -

- a) that from the death of the deceased in 1996 to-date the applicant and his sister have remained in occupation of the estate property;
- b) that his father was known as M'Imula and that he, the petitioner lives on his brother's land at Kiolone; Why would he be living on his brother's land if the deceased was his father and had left land in 1996? Why wait for 11 years to issue the applicant and his sister on 1st July, 2007 with a quit notice?
- c) that his father M'Imula died in 1975 as stated by **PW2**. That his father had 6 sons of whom he was one of them;
- d) while he indicated in the introduction letter by the Assistant Chief dated 8/4/2005 and **Form No. P&A 5** that he was the only son of the deceased, his own witness, **RW2 Ayub Muroki M'Ikiyu** testified that he knows the petitioner's other brother by the name **Kiramunya**.
- e) that he, the petitioner, was a son of Ciomatau a sister to PW2's father and not the deceased in this cause.

21. One other thing, the deceased died in 1996/7, the petitioner obtained the grant which was hurriedly confirmed on 18th December, 2002. Why did he wait for another five years to 1st July, 2007 seek the eviction of the applicant from the estate property? It did not escape this court mind that the petitioner did not indicate when the applicant and the sister allegedly invaded the estate land. The evidence of the applicant and his witnesses was that he and the sister have all along lived on that land since time immemorial. I did not believe that petitioner.

22. This court's findings are that, **M'Maeri M'Likabua** was also known as **Stavano M'Maeri M'Likabua**. He may not have been using his Christian name. That he died on 31st July, 1996. That he was married to one Nkatha and they only had two issues of the marriage, namely **Catherine Chabani Stavano and Isaac Muthine Stavano**. That this Cause was fraudulently filed by the petitioner using fake death certificate and a misleading letter of introduction by the Assistant Chief of Burieruri Sub-location.

22. Accordingly, the application is meritorious, the same is allowed. The grant issued to Isaiah Iruki on 11th June, 2008 is hereby revoked. The entries made on title number **Njia/Burie-ru-ri/792** are hereby cancelled and the title reverted back to the name of **M'Maeri M'Likaibua**.

SIGNED at Meru me:-

A. MABEYA

JUDGE

DATED and **DELIVERED** at Meru this 6th day of December, 2018.

F.K. GIKONYO

JUDGE