



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 155 OF 2001**

**IN THE MATTER OF THE ESTATE OF M'IRACHA alias IRACHGATUMO (Deceased)**

**TITUS MBAABU M'IRACHAM'IRACHA ..... PETITIONER/APPLICANT**

**-VERSUS-**

**JUSTUS MUTHAMIA..... OBJECTOR**

**BONIFACE GICHURU }**

**EDWARD NTEERE }**

**DAVID KIOGORA } .....RESPONDENTS**

**RULING**

**Security to Surveyor**

[1] The application dated 7<sup>th</sup> May 2015 is asking for:-

**An order that the OCS Nkubu Police Station to provide security to the surveyor in the Survey of L.R NO.ABOGEA/U-KITHANGARI/878.**

The applicant stated that this estate was distributed by court in the judgment dated 22.5.2009; yet despite all efforts to have the grant implemented, his brothers have frustrated the surveying of the estate property in accordance with the grant. He specifically averred that the Petitioner is not willing to complete the administration of the estate. At one time, he instructed a surveyor to survey the estate property but his brothers chased the surveyor away. And due to that hostility no surveyor is willing to subdivide the land unless security is provided.

[2] The application **TITUS MBAABU M'IRACHA** also filed submission in support of his application. In the submissions he reiterated the contents of his affidavit but emphasizes two things. One, that the judgment of 22.5.2009 has not been reversed or reviewed. Two, in the event of death of a beneficiary, the true beneficiary of the deceased party can always apply to have the share of the deceased party transmitted to them directly by the administrator. He therefore prayed for his application to be allowed.

**Respondent opposed application**

[3] The respondents narrated the history of this cause: that the grant issued to the applicant was revoked and another issued to Edward Nteere, Boniface Gichuru and the applicant on 12<sup>th</sup> November, 2013.

Edward Nteere in his affidavit averred that the applicant intends to distribute estate land to some deceased parties i.e. Mrs. Elizabeth M'iracha and Caroline Kinaru, M'iracha. Again, he stated that mode of distribution of the estate property has not been agreed upon and it is therefore pre-mature to subdivide the land. They sought dismissal of the application.

## **DETERMINATION**

[4] It seems there is deep seated acrimony amongst the parties herein. But as I have always said it is prudent for parties to be prepared to set aside their difference however sharp and apart they might be and be guided by the law. That aside, I note that the respondents have distorted the record in their narration of events in and status of these proceedings. I will, therefore, consult the record to discern the true state of affairs.

[5] I have perused the judgment of court (Lessit J) delivered on 17/10/2013; the court did not revoke the grant of letters of administration issued to TITUS MBABU; instead it added Boniface Gichuru and Edward Nteere as co-administrators and ordered the grant to be rectified to include these two co-administrators. And by that judgment, the application by Boniface Gichuru, Edward Nteere and David Kiogora dated 2<sup>nd</sup> October, 2012 failed and was dismissed. It is worthy of note that the said application was to restrain the administrators from among other things subdividing the estate property; and for revocation of grant. It is, therefore, not true that the grant to TITUS MBABU was revoked. The correct position therefore is that the estate is to be distributed in accordance with the judgment by EMUKULE J delivered on 22<sup>ND</sup> May, 2009. Thus, as the grant was duly confirmed, it must be so implemented by the three administrators in accordance with the schedule of distribution in the Certificate of Confirmation of Grant herein. Accordingly- and I am saying this again- the mode of distribution is not in dispute or a candidate for negotiation. As such, it is not true that the mode of distribution of the estate has not been agreed upon. From these events and the contrary averments of the respondent, it is clear to me that the respondents are the stumbling block to the administration of this estate. On that basis, the order for security is merited and I shall accordingly grant it. I must also state that it is the duty of personal representatives of the deceased to, inter alia, distribute or retain on trust (as the case may be) all assets of the deceased according to the beneficial interests of the respective beneficiaries and to complete administration thereof within 6 months or such longer period as the court will allow. It is also their duty to produce to the court a full and accurate account of the completed administration other than (continuing trust) of the estate. For better appreciation of these duties I cite part of S.83 of the Law of Succession Act herein below:

### **83. Personal representatives shall have the following duties-**

.....

**(g) within six months from the date of confirmation of the grant or such longer period as the court may allow, to complete the administration of the estate in respect of all matters of the than continuing trust, and to produce to the court a full and accurate account of the completed administration.**

**(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account**

**(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.**

**Deceased beneficiary**

[4] But before I close, I need to address one little but critical point that was argued by the respondents; about deceased beneficiaries. It is true that you cannot transfer property to a deceased beneficiary. Therefore, where a beneficiary dies before effectively receiving his or her share of the estate, the true position of the law is that the share of the deceased beneficiary shall be held in trust for the child or children of the deceased beneficiary in equal shares. This is the principle emerging from sections 38 and 41 of the Laws of Succession Act. The share shall then be distributed by the administrator of the estate of the deceased beneficiary in accordance with the principle of equality expounded in the Constitution, Section 38 and 41 of the Laws of Succession Act, or upon bidding consent of the parties. See the case of **Mamau vs. Kirima [2002] 2 KLR 172**. Therefore, death of a beneficiary does not prevent distribution of the estate except that part of the deceased beneficiary shall be held in trust for the persons entitled to it by the administrator and shall be part of trust property for that beneficiary.

### **Final Orders**

[5] Accordingly, I find that the respondents as joint administrators are not acting in accordance with the grant herein and the law. I note that, from the time the grant was confirmed of grant, much time has passed by without any meaningful step being taken towards completion of the administration of the estate herein. I therefore order:

**(1) That the administrators of the estate shall hold in trust the shares of the deceased beneficiaries namely Elizabeth M'Iracha and Carline Kinanu M'Iracha for the benefit of the children of the deceased beneficiaries in equal shares. And, they shall transmit those shares to the administrator of the estates of the deceased beneficiaries for distribution in accordance with the law or grant made in respect of those estates.**

**(2) That the administrators of the estate except the trust property in (1) above in respect of the deceased beneficiaries namely Elizabeth M'Iracha and Carline Kinanu M'Iracha shall complete within 3 months the administration of the estate herein in accordance with the judgment of court delivered on 22<sup>nd</sup> May, 2009;**

**(3) That an amended grant and certificate of confirmation of grant shall be issued in accordance with the Order No. 1 of Lessit J made in judgment delivered on 17<sup>th</sup> October, 2013.**

**(4) The Surveyor who shall subdivide the estate property shall be accorded maximum security by the OCS Nkubu Police Station while undertaking his work on the estate property.**

**(5) No person shall prevent implementation of the grant issued as per order (2) above. Should any person breach this order, may be cited for disobedience and be liable for contempt of court.**

**(5) Due to the nature of these proceedings, each party shall bear own costs.**

These orders are issued in the interest of justice and on application dated 7<sup>th</sup> May, 2015. It is so ordered.

**Dated, signed and delivered in open court at Meru this 18<sup>th</sup> day of January 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mwirigi advocate for interested party

Mrs. Kaume for applicant

Mbaabu advocate for objector

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**F. GIKONYO**

**JUDGE**