



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 119 OF 2003

**IN THE MATTER OF THE ESTATE OF M'MIRITI M'ATUNE-
DECEASED**

NKIROTE M'MIRITI.....ADMINISTRATRIX
/RESPONDENT

VERSUS

MARY KANANA
MUNENE.....OBJECTOR/APPLICANT

RULING

1. The objector herein Mary Kanana Munene commenced this application vide summons dated 28th June,2024. The Application is brought pursuant to Sections 47 & 76 of the Law of Succession Act, Rules 26,27,44(1) & (2), 49 and 73 of the Probate and Administration Rules. It seeks for Orders: -

1. Spent

2. That this Honourable Court be pleased to annul or revoke the letters of administration issued to the

administratrix and confirmed on 22nd October,2010 and this cause be heard afresh.

3. That alternatively the administratrix be ordered to transfer the remainder of one of the deceased's estates currently in her name plot No. 4B Gatimbi Market to the Applicant.

4. That this Honourable Court be pleased to grant the Applicant leave to file objection out of time.

5. That costs of this summons be provided for.

2. The application is anchored on the grounds on the face of the Summons as well as the affidavit sworn by the objector, Mary Kanana Munene, on the same date.

3. The objector deposed she is the deceased's daughter and that her mother, the administratrix herein, filed this cause secretly and she learnt about the same after she sued her in GITHONGO SRM ELC CASE NO. E011/2020 for cancellation of her name as the owner of the deceased's plot No. 4B GATIMBI MARKET for alleged fraud after she had voluntarily gifted her the said property in 2011.

4. She averred that during the distribution of the deceased's estate ,the administratrix distributed the lion's share of the estate to herself about 66 points, her son Joseph Kithinji about 2 acres jointly with his wife one Esther Nkatha , her daughter Priscilla Kithira about $\frac{1}{2}$ acre who sold to one Sammy Kiogora, her second daughter Stella Kagure about 69 points who sold to one Gregory Kiambi and her third daughter Esther Gacheri about 69 points who sold to Dennis Murithi.
5. She asserted that the administratrix misled the court by claiming she had been allocated $\frac{1}{2}$ an acre on L.R. No. ABOTHUGUCHI/KARIENE/1742, whereas in reality, she had been given a $\frac{1}{2}$ share of the property, being a plot measuring approximately 20 by 80 feet. She further alleged that the administratrix concealed from the court the fact that she had purchased the said plot from the deceased during his lifetime and that the remaining $\frac{1}{2}$ share of the plot belongs to the late Rubara Iberi.

6. She added that the grant was obtained fraudulently and by concealment of material fact from the court as she was denied her equitable share in the deceased's estate.
7. It was her deposition that although her mother had gifted her Plot No. 4B Gatimbi Market her name was subsequently cancelled and the same reverted to her name and that as stated in 2011 she had developed the property by constructing a permanent building comprising a shop and rear rooms from which she had been collecting rent until recently when her mother stopped the tenants from paying rent to her.
8. She contended that her siblings received their respective shares and her sisters sold theirs to third parties. She believes this is the reason they incited their mother to sue her for the cancellation of her name as the owner of Plot No. 4B Gatimbi Market so that the property would revert to their mother's name and thereafter influence her to transfer it to them.
9. She asserted that she conducted searches at the land registry on the deceased's properties and established that

the only remaining assets of the deceased's estate are three parcels registered in the administrator's name. i.e. L.R. No. ABOTHUGUCHI/KARIENE/4951 measuring 0.20 Ha, L.R. No. ABOTHUGUCHI/KARIENE/4952 measuring 0.17 Ha, and Plot No. 4B Gatimbi Market.

10. She prayed that the court exercises its discretion in light of the remainder of the deceased's estate and compel the administrator to transfer to her Plot No. 4B GATIMBI MARKET otherwise she shall forever remain disinherited.
11. In opposition to the Application, the Respondent, Nkirote M'Miriti swore a Replying Affidavit on 4th February,2025.
12. She deposed that she is the deceased's widow and that all her daughters got their shares in the deceased's estate including the Applicant herein who got ABOTHUGU/KARIENE /1742.
13. She deposed that the Applicant was always aware of the succession proceedings and she actively participated in the same.

14. It was her deposition that sometimes in 2011, the Applicant took advantage of her illiteracy and illegally transferred to herself Plot No. 4B GATIMBI MARKET and vide a plaint dated 3rd November,2020 she sought for cancellation of the registration of the property in her name and through a judgement dated 14th November,2022, the Applicant's registration was cancelled and the aforesaid plot reverted to her name.
15. She averred that the developments on Plot No. 4B Gatimbi Market were undertaken by the deceased and that all proceeds therefrom have always been applied for the benefit of the entire family.
16. She further averred that it is selfish of the Applicant to demand the transfer of PLOT 4B Gatimbi Market to herself to the detriment of her sisters and that she had since transferred the same to her daughter Stella Kagure and her nephew as they have been catering to her needs in her old age.
17. She contended that the Applicant also took advantage of her old age and withdrew all the monies in the deceased's

bank accounts and has further refused to support her in anyway.

18. She averred that as the deceased's widow, she is entitled to a life interest in the deceased's property having acquired the same with him during the subsistence of their marriage.
19. She contended that the application is wrongly placed before this court because this matter was determined in Githongo ELC CASE NO. E11 OF 2020.
20. She contended that the Applicant is a perpetual litigant and she has kept them in court for 22 years and that the matter should come to a conclusion.
21. Stella Kagure M'miriti, one of the deceased's daughters equally swore a replying affidavit in opposition to the Application on 27th January, 2025 reiterating the 1st Respondent's averment.
22. On 19th March, 2025 when this matter was mentioned to confirm compliance on the filing of the Replying Affidavit by the respondent, the respondent sought for 14 days to file her

submissions. However, at the time of writing this ruling no submissions had been filed.

Analysis & Determination

23. I have read the Application, affidavits in support and in opposition to the Application.

24. It is noted that on 23rd July 2024, the application was placed before my brother Hon. Justice L.P. Kassan. The court allowed prayers 2 and 4 of the said application. Prayer 2 specifically sought to have the grant revoked.

25. The effect of the said orders of 23rd July 2024, would be to revoke the entire grant and the confirmation thereof. That means that the next course of action would be to have the grant confirmed afresh. There has been no appeal against that order, and the same having been issued by a court of concurrent jurisdiction, I cannot revisit the same.

26. Therefore, the only pending prayer is prayer 3, that is whether the Plot No. 4B Gatimbi Market should be transferred to the Applicant.

27. That said, I have perused the proceedings in this matter. The deceased died on 29th January, 20023.

Thereafter, the respondent petitioned for grant of letters of administration intestate on 9th April,2003. The same were issued to her on 19th May,2003 and confirmed on 22nd October,2010.

28. According to the certificate of confirmation of grant, the deceased's estate comprised five assets, namely: L.R. No. ABOTHUGUCHI/KARIENE/266 measuring 2 acres, L.R. No. ABOTHUGUCHI/KARIENE/161 measuring 0.69 acres, L.R. No. ABOTHUGUCHI/KARIENE/1742 measuring 1 acre, L.R. No. ABOTHUGUCHI/RUIGAI/1252 and PLOT NO. 4B-GATIMBI MARKET.

29. The above properties were distributed as follows: -

- L.R. No. ABOTHUGUCHI/KARIENE/266- To Francis Kithinji (son), whole share.
- L.R. No. ABOTHUGUCHI/KARIENE/161- To Stella Kagure (daughter), whole share.
- L.R. No. ABOTHUGUCHI/KARIENE/1742- To Mary Kanana (the Applicant) and Rubana Kaberia (daughters), $\frac{1}{2}$ acres each.

- L.R. No. ABOTHUGUCHI/RUIGAI/1252- to Priscilla Kithira & Esther Gacheri (daughters) 0.5 acres each.
- PLOT NO. 4B-GATIMBI MARKET- To Nkirote M'mbiti to hold in trust for all the deceased's daughters.

30. It is evident from the aforesaid certificate of confirmation of grant that save for Francis Kithinji, who was allocated 2 acres, and Stella Kagure, who was allocated 0.69 acres, all the other daughters of the deceased, including the Applicant, were each allocated $\frac{1}{2}$ an acre of land. Thus, the distribution was fair and non-discriminatory.

31. The Objector has not provided any cogent evidence to substantiate her claim that she purchased L.R. No. ABOTHUGUCHI/KARIENE/1742 from the deceased during his lifetime or that the remaining $\frac{1}{2}$ share of the plot belonged to the late Rubara Iberi.

32. According to the Black's Law Dictionary, 9th Edition; a trust is defined as

“1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

33. According to the certificate of confirmation on record, the Respondent, as the widow of the deceased, holds the property in trust for all the deceased’s daughters. She has no authority to dispose of the property to any third party or to any beneficiary to the exclusion of others, and any such transfer, if effected, is null and void ab initio. Therefore, that transfer ought to be reversed forthwith. An order cancelling the transfer is hereby issued.

34. Similarly, transferring Plot no. 4B Gatimbi Market exclusively to the Objector as prayed would be contrary to the grant, inequitable and contrary to the principles of equality among beneficiaries.

35. In the upshot, I find that the court cannot grant prayer 3 of the application dated 28th June,2024 and it is dismissed with no orders as to costs.

36. As I stated earlier, the court had granted prayers 2 and 4 of the application. It is for the parties to then have the grant confirmed afresh.

37. Orders accordingly.

Dated, signed and delivered at Meru this 8th day of October, 2025.

**H. M. NYAGA
JUDGE.**