



**In re Estate of M’noti M’ikiara (Deceased) (Succession Cause  
61 of 2019) [2023] KEMC 301 (KLR) (20 November 2023) (Ruling)**

Neutral citation: [2023] KEMC 301 (KLR)

**REPUBLIC OF KENYA  
IN THE GITHONGO LAW COURTS  
SUCCESSION CAUSE 61 OF 2019  
AT SITATI, SPM  
NOVEMBER 20, 2023  
IN THE MATTER OF THE ESTATE OF M’NOTI M’IKIARA  
(DECEASED)**

**BETWEEN**

**FRANCIS MWIRIGI KINOTI ..... PETITIONER**

**AND**

**FLORENCE NCEECE ..... 1<sup>ST</sup> PROTESTOR**

**JENNIFER MUGURE ..... 2<sup>ND</sup> PROTESTOR**

**RULING**

1. By a Summons dated 20<sup>th</sup> July, 2023 supported by an affidavit of similar date, the 2 Applicants prayed for the following reliefs:
  1. That the court be pleased to authorize the Court Administrator of this Court to sign all such documents on behalf of the petitioner Francis Mwirigi M’noti and the beneficiaries Veronica Nyegera, Japhet Mwaki M’Inoti, Maricela Mugure, Evangeline Kananu Mutuaruchiu, Silas Kinyua M’Inoti and Cypriano Kiuria M’Inoti so as to parititon land parcel Abothuguchi/Kariene/867 and to transfer each land parcel to respective parties.
  2. That the court be pleased to dispense with the production of the identity card, KRA PIN and passport size photographs of Francis Mwirigi M’Inoti, Veronica Nyegera, Jpahet Mwaki M’Inoti, Maricela Mugure, Evangeline Kananu Mutuaruchiu, Silas Kinyua M’Inoti and Cypriano Kiuria M’Inoti
  3. That the Court be pleased to dispense with the production of the old title deed to land parcel Abothuguchi/Kariene/867 while carrying out necessary transactions of the said land parcel.



4. That the costs of this application be in the cause.
2. The grounds relied on by the Applicants were that:
  - a. It was more than a year since 30<sup>th</sup> May, 2022 when this Honourable Court issued the Certificate of the Confirmation of Grant in which the 2 applicants and others were identified as beneficiaries in the estate and that since that date the Petitioner/Administrator had refused and/or failed to take the necessary steps to give effect to the distribution orders.
  - b. The Administrator and some beneficiaries had colluded to frustrate the implementation of the Confirmation of Grant.
3. The Respondent/Administrator filed a Replying Affidavit dated 14<sup>th</sup> August, 2023 opposing the Summons by the 2 Applicants. He contended that:
  - a. He was not opposed to the distribution at all;
  - b. The land size in the Certificate of Confirmation was said to be 1.10 acres yet the ground measured 0.85 acres meaning that the acreage was insufficient to satisfy the court Order. He added that the cause of the reduced acreage was a sale of ¼ acre to a third party.
  - c. The 2 applicants had declined to accept the smaller size of 0.85 acres which was what was on the ground.
4. The Respondent also filed written submissions dated 10/11/2023 reiterating his averments in the Replying Affidavit
5. By written submissions dated 13<sup>th</sup> October, 2023 the 2 Applicants countered the Replying Affidavit pointing out that the ¼ acre sale was dealt with by the Succession Court which found the sale illegal and therefore it was res judicata and cannot be an excuse to prevent the distribution of 1.10 acres to the Applicants. Reliance was placed on Rule 73 of the Probate and Administration Rules which empowered the court to make such orders as will be necessary to prevent the ends of justice from being defeated.
6. The only issue to be determined is whether or not the Applicants have made out a case to bypass the Administrator of the Estate in signing of the necessary documents to give effect to the distribution of the shares of the Estate.

### **Determination**

7. The guiding rule for the completion of the distribution of the estate is to be found in section 83 of the [\*Law of Succession Act\*](#) which provides as follows:
  83. Duties of personal representatives
    - (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 other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
8. From the record it is more than 18 months now since the Court issued the Certificate of Confirmation of grant in which the 2 applicants were identified as beneficiaries of 1.10 acres. The inordinate delay is clearly defeating justice.



9. Taking guidance from John Simiyu Palanga (Deceased) & another v Chopkooe Koskei & another [2018] eKLR (N.A. Matheka J.) where the Judge found that the Respondent was taking steps to defeat the Order of distribution of the land and authorized the High Court Deputy Registrar to sign the transfer documents, this Honourable Court is satisfied that there is merit in the present application. From the material placed before this Honourable Court, the court is satisfied that the Respondent/Administrator and some of the beneficiaries are just deploying delaying tactics to prevent the 2 applicants from inheriting their rightful share taking into account that the 2 applicants only became included after they formally protested at their being excluded from the estate.
10. The related issue of the reduced acreage from 1.10acres to 0.85acres was heard and determined by the Succession trial court which found that the sale of ¼ acre to reduce the acreage available was null and void and the same is thus res judicata and this excuse is dismissed.
11. In the result the court allows the application in the following terms:
  - a. The Court Administrator of this Court shall sign all such documents on behalf of the petitioner Francis Mwirigi M'noti and the beneficiaries Veronica Nyegeera, Japhet Mwaki M'noti, Maricela Mugure, Evangeline Kananu Mutuaruchiu, Silas Kinyua M'noti and Cypriano Kiuria M'noti so as to partition land parcel Abothuguchi/Keriene/867 and to transfer each land parcel to respective parties.
  - b. That the Court hereby dispenses with the production of the identity card, KRA PIN and passport size photographs of Francis Mwirigi M'noti, Veronica Nyegeera, Jpahet Mwaki M'noti, Maricela Mugure, Evangeline Kananu Mutuaruchiu, Silas Kinyua M'noti and Cypriano Kiuria M'noti
  - c. That the Court hereby dispenses with the production of the old title deed to land parcel Abothuguchi/Kariene/867 while carrying out necessary transactions of the said land parcel.
  - d. That the costs of this application be in the cause.

It is so ordered.

**DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS...20TH....DAY OF NOVEMBER, 2023**

=====

**HON. T.A. SITATI**  
**SENIOR PRINCIPAL MAGISTRATE**  
**GITHONGO LAW COURTS**

