

**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 78 OF 2005**

**IN THE MATTER OF THE ESTATE OF M'IRURA M'ITHIRI -  
DECEASED**

**FLORENCE KANANU MURUNGA.....**

**.....PETITIONER**

**VERSUS**

**JUDITH GATWIRI M'IRURA.....1<sup>ST</sup>**

**PROTESTOR**

**PATRICK MUTHOMI RUTERE.....2<sup>ND</sup>**

**PROTESTOR**

**ROSE NTINYARI HARON.....3<sup>RD</sup>**

**PROTESTOR**

**PENINA KIBOBORI.....4<sup>TH</sup> PROTESTOR**

**RULING**

**Background**

1. The deceased died on 3<sup>rd</sup> May, 2004.
2. Subsequently, Florence Kananu applied for grant of letters of administration intestate.

3. On 12<sup>th</sup> May, 2005, a grant was issued to her. She then filed summons for confirmation of a grant dated 6<sup>th</sup> January, 2006. Judith Gatwiri M'Irura filed a protest dated 24<sup>th</sup> January, 2007.
4. The court record is not clear on the fate of the said summons and protest. However, it is apparent that there was fresh summons for confirmation of a grant dated on 17<sup>th</sup> September 2009. The said Judith Gatwiri filed another protest. The court directed that the summons and protest proceed by viva voce evidence.
5. At the conclusion of the hearing Judgment was delivered by this court (Hon. Justice F. Gikonyo) on 10<sup>th</sup> July,2017.
6. The court ordered that the estate be distributed as particularized of in page 16 of the Judgment. A certificate of confirmation of grant was then issued by the court, dated 10<sup>th</sup> July 2017 to give effect to the Judgment.
7. No appeal was preferred by any of the parties.
8. Vide an application dated 12<sup>th</sup> March, 2018 Gladys Ncece Irura sought the revocation of the grant herein on the ground that the same was obtained fraudulently and without her consent.
9. On 20<sup>th</sup> July 2018, the court dismissed the said application on the ground that the applicant was clearly provided for in the grant. She was then advised to seek redress in the Court of Appeal.
10. On 19<sup>th</sup> October 2018, Peninah Kibobori moved the court vide her application dated 18<sup>th</sup> October 2018, also seeking to revoke the

grant herein. She claimed that she was a daughter of Peter Kathurima Irura, a son to the deceased herein, and that she had been excluded from the distribution of the estate. She further averred that Rose Ntinyari has sold her portion when their father was alive and was thus not entitled to any share of LR Kiirua/Kiirua/994.

11. Again, the court record is not clear as to what became of that application. On 12<sup>th</sup> February 2019, there was no appearance by the parties and the court noted that it had already distributed the estate.
12. Vide an application dated 19<sup>th</sup> February 2019, the said Peninah Kibobori sought to have the orders of 12/2/2019 reviewed. On 29<sup>th</sup> April 2019, the said application was withdrawn.
13. At that particular moment Judith Gatwiri Irura filed an application dated 26<sup>th</sup> March, 2019, which sought inter alia, that the Deputy Registrar executes the requisite document and that OCS Kiirua Police Station provides security in execution of the grant on the ground, during the survey. The application was granted.
14. Nothing happened from that time, until the application dated 14<sup>th</sup> May, 2024 was filed by the said Peninah Kibobori.

### **The Application**

15. The application seeks, the following orders:-
  - a) Spent.**

***b) The honourable court be pleased to revoke and/or annul the grant herein, alternatively the court be pleased to make a provision for applicant.***

***c) Costs be provided for***

16. The gist of the application is that the applicant, being a child of Peter Kathurima and a beneficiary to the estate was not provided for. That her father was entitled to a share of LR. Kiirua/Kiirua/194, which, he was to share with Gladys Ncece. That her father died before he could get his entitlement and his share was given to Rose Ntinyari, who was supposed to get a share in LR Kiirua/Kiirua/1001 together with the daughters of the deceased. That the deceased had two houses and her father was to get her his share from his house which includes Gladys Ncece.
17. She therefore claimed one acre out of LR. Kiirua/Kiirua/994.
18. The Petitioner/administrators filed a replying affidavit sworn on 19<sup>th</sup> December, 2024. She stated that by oversight, the applicant was not provided for. That land Parcel LR. Kiirua/Kiirua/994 was to be shared between Gladys Ncece and Peter Kathurima. She further stated that though Rose Ntinyari got her share from the deceased and sold it, she would get a share in parcel No. Kiirua/Kiirua/1001 together with Judith Gatwiri, Harriet Mwendwa and Evangeline Kinya.
19. In agreement with the applicant, she proposed that the grant be amended as follows: -

**a) Parcel LR. Kiirua/Kiirua/1001 to be shared equally between;**

- i. Rose Ntinyari**
- ii. Judy Gatwiri**
- iii. Harriet Mwendwa**
- iv. Evangeline Kinyua**

**b) Parcel LR. Kiirua/Kiirua/994 be shared equally between:-**

- i. Gladys Ncece**
- ii. Peninah Kibobori**

20. Gladys Ncece Irura and Lilian Mwari swore a joint replying affidavit on 19th December, 2024. They were in agreement with the Petitioner's proposal on amendment of the grant.
21. Rose Ntinyari Haron swore an affidavit on 24<sup>th</sup> February, 2025. She deponed that all along, the dispute has been was that she was not entitled to a share of the estate on the allegation that she had gotten her share during the lifetime of the deceased and sold the same.
22. She averred that there is a spirited effort by the Petitioner using Gladys Ncece and Peninah Kibobori to lock her out of the inheritance. She describes Peninah as a proxy of the other two stated persons who had filed a case in the Environment & Land Court (ELC) against her and the Petitioner but the same was dismissed for want of prosecution.
23. She further averred that the applicant herein has been aware of the Judgment since 2017 and has never appealed against it. That

the applicant is not related to the estate as Peter Kathurima has no child. That the parties ought to abide by the decision of the court and litigation has to come to an end.

### **Analysis and determination**

24. It is not in dispute that this matter was heard and a Judgment was delivered on 10<sup>th</sup> July, 2017. No appeal was preferred against it.
25. The present application although seeking to revoke the grant for not providing for the applicant as a child of the said Peter Kathurima, has led the parties to a path that amounts to rehashing issues already dealt with by the court when it delivered its judgment.
26. It is very clear, from any reading of paragraph 13 of the Judgment of this court, that the court considered the issue whether Rose Ntinyari, had received a gift *inter vivos* and sold it. The court found there was no evidence of such allegations and concluded the sale of land parcel LR. Kiirua/Kiirua/999 was affected by the deceased.
27. In my view then, the proposal by the Petitioner on how to distribute land Parcel LR. Kiirua/Kiirua/994 is tantamount to reviewing the Judgment of the court. Having found that Rose Ntinyari was entitled to an equal share of that parcel, then it has to remain so, unless the judgment is set aside on appeal.

28. Although the Petitioner purports to state the reference to Oliver in her previous pleadings and evidence, as an honest mistake, and that she meant the applicant, there can be no truth in that statement. It is very clear that Oliver had been deliberately introduced by the Petitioner, in that he was meant to take care of the interests of Gladys Ncece, who was said to be disabled. The court dismissed the application to include him as such and found that he could only claim his share from the share of his father, one Lawi Bundi.
29. From the court record, it was acknowledged that Peter Kathurima was not deceased at the time the Petition and the first application for confirmation of the grant were filed, as he was listed amongst the beneficiaries. It appears like he died before the protest was heard.
30. In his affidavit sworn on 17<sup>th</sup> September, 2009, in support of the summons for confirmation of grant of even date, the petitioner did not include Peter Kathurima as a beneficiary and even during the hearing, that remained the case.
31. Therefore, the issue of Peter Kathurima having a child arose first vide the application that was withdrawn in 2019, and now in 2024.
32. I have noted that the Peninah Kibobori has not filed her birth certificate to confirm her date of birth and the registered paternity, if any.

33. There is dearth of information about Peninah and her relationship with Peter Kathurima. It was upon her to avail such information as which would led the court to make a prima facie finding that she should be a child of the said Peter Kathurima.
34. The chief's letter that she annexed in her application is of no assistance to her cause.
35. While the court would be at the forefront of ensuring that a beneficiary to an estate gets his/her rightful share, its upon that beneficiary to provide a basis is thereof.
36. It is my finding that no such basis has been laid and the application is dismissed with no orders as to costs.

**Dated, Signed & Delivered at Meru this 20<sup>th</sup> day of November, 2025.**

**H. M. NYAGA  
JUDGE**