



REPUBLIC OF KENYA



**In re Estate of M'Ithinji M'Imanyara - Deceased (Succession Cause  
336 of 1994) [2025] KEHC 17241 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17241 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 336 OF 1994  
HM NYAGA, J  
NOVEMBER 20, 2025**

**BETWEEN**

**SIMON MWIRIGI M'ITHINJI ..... PETITIONER**

**AND**

**DAVID KIAMBI M'ITHINJI ..... INTERESTED PARTY**

**RULING**

1. Samuel Mwirigi M'ithinji is the administrator to the estate herein. He has moved the court vide an application dated 6<sup>th</sup> November, 2024, which seeks the following orders:-
  - a. Spent
  - b. That this Honorable court be pleased to vary the certificate of confirmation grant and have the petitioner Simon Mwirigi M'ithinjigetting the whole of land parcel LR No.timau/Timau Block3/147 while David Kiambi M'ithinjiand Nancy Gaicugi Kagwiriagetting land parcel Mwichwiri TwoM/NO.540 fully.
  - c. That this honorable court be pleased to issue any other orders to meet the ends of justice.
  - d. That the costs for and incidental to this application be costs in the cause.
2. The gist of the application is that the estate herein was distributed wherein the interested party got the whole land Parcel No. Mwichuiri Two M/No. 540. That the said interested party Nancy Gaicugi Kagwiria and the applicant got 1.10 acres. 1.10 acres and 1.04 acres of land parcel No. Timau/Timau Block 3/147 respectively. That he and the interested party had sold the whole of Mwichwiri Two M/ No. 540 to third parties and he later bought the said property back wholly.
3. That the interested party has refused to cooperate in the transmission of the estate's property. That it is fair for the interested party to cede his interest in parcel No. Timau/Timau/Block 3/147 along



with Nancy Gaicugi Kagwiria to him and have the whole of Parcel No. Mwichwiri Two M/No. 540 for themselves fully.

4. The applicant states that in doing so, the two respondents will even get bigger land.
5. Lucy Mukiri Nkoroi filed a replying affidavit sworn on 6<sup>th</sup> October, 2025. She deponed that she has the authority of Stellah Nkatha and Nancy Gaicugi Kagwiria and Damaris Kithinji to swear the affidavit.
6. She states that the application was filed without their consent and the intended rectification and valuation of the confirmed grant is an attempt by the applicant to deprive the other beneficiaries to their rightful share of the estate. That his intention is to have a bigger share of the estate, to the detriment of the other beneficiaries.
7. She further depones that the applicant has failed to disclose to the court that after the confirmation of the grant he sold LR. No. Timau/Timau/Block 3/147 to one Stanley Mwongera Mathiu.
8. It is further deponed that the applicant had filed a similar application dated 29<sup>th</sup> January, 2024, hence this application is an abuse of the court process.

### **Analysis & Determination**

9. The applicant has come to court under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules. The said provisions empower this court to grant any orders that may be in the interest of justice.
10. Although the Act gives this court such powers, it is clear that what the applicant seeks is not a rectification of the grant as stated. What he is seeking is actually seeking a complete revocation of the confirmed grant in respect to the mode of since he has now sought a different mode of distribution of the estate.
11. The grant herein was confirmed with the consent of the parties and reviewed with the same consent. Each beneficiary's entitlement is clearly set out.
12. What the applicant is doing is to try and force the other beneficiaries to accept his proposed way.
13. Matters are made worse by the revelation that the applicant has sold part of Timau/Timau/Block3/147, the same land where he wants the interested parties to cede their interests.
14. I also note that the applicant had moved this court vide an application dated 29<sup>th</sup> January, 2023. The court noted that lad Parcel No. Timau/Timau Block 3/147, was no longer in existence since new titles had been issued, namely Timau/Timau/Block3/435 and Timau/Timau/Bock3/436. The court noted that the applicant had failed to disclose who the owners of the two sub-divisions were.
15. The application before me is clearly an attempt to have the confirmed grant reviewed through the back door. The applicant cannot purport to impose his will on the other beneficiaries even if he is the administrator.
16. Any review ought to be done with the consent of all the beneficiaries, which is not the case.
17. I find that this application is wanting in merit and it is dismissed with costs to the respondents.
18. The administrator is given 120 days to complete the transmission of the estate as per the confirmed grant, failing which the court may step in and revoke the grant, under section 76 of the Act.
19. Each beneficiary is to cater for the costs of transmission of their respective portions of land forming the estate.



**DATED, SIGNED & DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**H. M. NYAGA**

**JUDGE**

