



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 218 OF 2011

**IN THE MATTER OF THE ESTATE OF JOSEPH MUGUONGO
alias JOSEPH M'MUKETHA alias JOSEPH M'MUKETHA
MUNGI (DECEASED)**

JOSHUA MWORIA M'MUKETHA.....1ST

PETITIONER

ROSE KARWITHIA OBAE.....2ND

PETITIONER

VERSUS

MARY MWENDWA MUKETHA.....

OBJECTOR

JUDGMENT

1. For determination is the summons for confirmation of grant dated 7/12/2020 under section 71 of the Law of Succession Act, seeking that:

1. The grant of letters of Administration made to ROSE KARWITHA OBAE and JOSHUA MWORIA JOSEPH on 18th March 2014 be now confirmed.
 2. The estate of the deceased be distributed as per paragraph 6 of the supporting affidavit.
 3. The costs of this application be in the cause.
2. The application is supported by an affidavit sworn by the petitioners on even date. They have at paragraph 6 thereof proposed how **Plot No. 31A Kangeta, Plot No. 31B Kangeta, L.R No. Nyaki/Giaki/104, L.R No. Nyaki/Giaki-Kibuune/218, Breweries shares and Coffee shares (hereinafter referred to as the estate properties)** ought to be distributed.
 3. The objector herein, the widow to the deceased filed an affidavit of protest on 15/11/2021 in opposition to the proposed mode of distribution. According to her, the deceased had 3 wives namely Sarah Kanuu (deceased), Rael Karambu Muketha (deceased) and her and the estate properties ought to be distributed as proposed at paragraph 5 thereof.

4. The 2nd petitioner filed her witness statement dated 14/2/2023 in support of the summons for confirmation of grant.
5. The objector filed her witness statement dated 9/11/2022 in support of her protest. She stated that the 1st house lived on L.R No. Nyaki/Mulathankari/69, the 2nd house on L.R No. Nyaki/Giaki-Kiburine/218 and the 3rd house on L.R No. Nyaki/Giaki-Mbeu/104.
6. premised on the grounds that the applicants are a daughter and a daughter-in-law, respectively, of the deceased, and they were completely excluded during the distribution of the estate. The petitioner herein, a daughter of the deceased, committed acts of fraud and is in the verge of transferring the estate to 3rd parties. Further, Plot No. 44II B Nkubu was deliberately omitted, yet it forms part of the estate. The proceedings to obtain the grant were defective in substance, as no consent was obtained from the applicants. The applicants will suffer irreparable loss of their share, unless the orders sought herein are granted.
7. The petitioner swore a replying affidavit on 15/3/2022 in opposition to the application. She averred that before filing this cause, she convened a family meeting on 17/6/2015, where

they all agreed, in the presence of the applicants, how to distribute the estate. On 17/10/2018, the grant was confirmed after the court noted that the applicants were hell bent on delaying the distribution of the estate. Plot No. 44II B Nkubu was jointly registered in the name of the deceased herein and Judith Nkirote Ayub, and consequently, the joint owner took exclusive possession thereof, under the doctrine of survivorship. The applicants had not explained the delay of 4 years in bringing this application, which she prayed to be dismissed with costs.

Oral Evidence

8. **AW1 Rachel Ngugi M’Kwaria**, the 1st applicant herein, adopted her statement dated 26/6/2024 as her evidence in chief, and produced the documents filed therewith as exhibits. She told the court that, she had been in occupation of Plot No. 44 B Nkubu Township measuring 20 × 100 metres since 2008 together with her sister Judith Nkirote, though it was not officially subdivided between them. In 2011, the deceased herein went to the county government’s office to transfer her

share of the plot to her, which was met with objection from Judith Nkirote. The petitioner filed this cause without involving her and she did not attend any meeting at home. L.R No. Abothuguchi/Lower Kiija/583 was sold by the deceased herein to Faith Nduru and Douglas Kinoti. The wife of his late brother, their children and other beneficiaries were also left out. While she did not appeal against the decision herein, she still prayed for the revocation of the grant, for want of participation in these proceedings. She denied attending the meeting of 17/6/2015, and asserted that she lived on Plot No. 44 B even during the lifetime of the deceased.

9. **AW2 Agnes Kendi Kaburu** adopted her statement dated 26/6/2024 as her evidence in chief. As the wife to a son of the deceased herein namely Jacob Kaburu M'Kwaria (also deceased), she was neither involved when this cause was filed nor indicated as a beneficiary. The deceased gave her 1 acre out of L.R No. Lower Mikumbune 79 to farm while the 1st applicant was given Plot No. 44 B Nkubu. She prayed for equal distribution of the estate and affirmed that the signature appended on the minutes dated 17/6/2025 was hers.

10. **AW3 Douglas Kinoti Muriuki**, testified that he and Faith Nduru Muriuki bought L.R No. Abothuguchi/Kiija/583 from the deceased herein for a consideration of Ksh. 500,000, but the transfer was never effected because the land was encumbered. He paid Ksh. 300,000 and the failure to pay the balance of Ksh. 200,000 was a breach of clause 1 (b) of the sale agreement. He never wrote, applied to the land registrar to remove the caution, nor sued the family of the deceased to effect transfer of that land.
11. **AW4 David Gituma M’Ithinji** adopted his statement dated 26/6/2024 as his evidence in chief. He told the court that the deceased herein sold the Nkubu plot to his father, and he was pursuing his father’s entitlement. He was unaware of Judith Nkirote’s occupation of the plot although he indicated in his statement that his family had been in occupation thereof.
12. **RW1 Margaret Chaku Jobs**, the petitioner herein, adopted her replying affidavit, sworn on 15/3/2022, as her evidence in chief, and the documents filed therewith as exhibits. She stated that the estate herein comprised only of L.R No. Abothuguchi/Kiija/583, as Plot No. 44 B was acquired by Judith

through the doctrine of survivorship. All the beneficiaries, including the applicants, were involved in the filing of this cause, after the meeting held in their presence, and Douglas and Faith did not get the 0.5 acres because they failed to clear the balance of the purchase price of Ksh. 200,000. She was unaware whether Plot No. 285, which was still in the name of their father, and subject of a different succession cause, was sold to Douglas and David.

13. **RW2 Judith Nkirote Jobs**, told the court that the applicants were aware of these proceedings, and they attended the meeting where the agreement on how to distribute the estate was reached. She was given Plot No. 583 by the deceased herein, where she built a permanent house during the lifetime of the deceased, which she then gave to her son, namely Patrick Muthuri. She gave Faith and Douglas, $\frac{1}{2}$ acre each, because they had purchased them from the deceased, she retained the remaining $\frac{1}{2}$ acre thereof, while plot No. 285 went to the petitioner and her brothers. Plot No. 44 B was now hers as she was a joint co-owner thereof with the deceased herein.

14.The application was canvassed by way of written submissions, which were duly filed.

Analysis and Determination

15.The issue for determination is whether the grant should be revoked.

16.Section 76 of the Law of Succession Act stipulates that a grant of representation, whether or not confirmed, may at any time be revoked or annulled, either on application by any interested party or of its own motion if: **“(a) that the proceedings to obtain the grant were defective in substance; (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently; (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either -(i) to apply for confirmation of the grant within one year from the date**

thereof, or such longer period as the court order or allow; or (ii) to proceed diligently with the administration of the estate; or (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or (e) that the grant has become useless and inoperative through subsequent circumstances.”

17. The undisputed evidence is that the applicants and the petitioner are daughters of the deceased, and thus beneficiaries of the estate. On 6/6/2005, the consent in Embu Succession Cause No. 189/1998 in respect of the estate of M’Kwaria Mbiria was adopted as a consent judgment, where the deceased herein was given Plot No. 44 B to hold in trust herself and Judith Nkirote Ayub. That consent precipitated in the issuance of the certificate of confirmation of grant in those terms. L.R Nos. Nkuene/Taita/285 and Nkuene/Mikumbune/79

were conclusively dealt with in those proceedings, and are thus unavailable for distribution.

18. The distribution of L.R No. Abothuguchi/Lower Kijja/583 was agreed in the meeting held on 17/6/2015, and attended by the applicants, that; **“1. Gladys Nchooro at her lifetime allocated one acre to Faith Nduru and the family is aware. 2. Judith Nkirote purchased a half acre share from Gladys Nchooro and family is aware. 3. Douglas Kinoti Muriuki also purchased from Gladys agreement available.”**

19. That is the mode of distribution adopted by the court during the confirmation of the grant on 17/10/2018. During the confirmation hearing, the court took cognizance of the blatant absenteeism of some of the beneficiaries and allowed the summons for confirmation of the grant dated 3/7/2018 in terms of paragraph 5 of the affidavit in support thereof.

20. The question then lingers whether the share of the deceased herein in Plot No. 44 B passed to Judith Nkirote Jobs through the doctrine of survivorship.

21. Tenancy in common is defined under section 2 of the Land Act to mean a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds an individual, undivided interest in the property and each party has the right to alienate, or transfer their interest; while joint tenancy is defined to mean a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners.

22. The Court of Appeal in **Mukazitoni Josephine v Attorney General Republic of Kenya (Criminal Appeal 128 of 2009) [2015] KECA 407 (KLR) (Crim) (25 September 2015) (Judgment)** rendered thus; ***“34. We have considered the appellant’s contention and the learned judge’s finding. The title document to the property has two names, and this is concurrent ownership. There is no indication as to whether the property is held on a tenancy-in-common or joint tenancy or tenancy in entirety. When a property is***

registered in more than one name, in the absence of a contrary entry in the register, the property is deemed to be held in joint tenancy and not tenancy-in-common or tenancy in entirety. A tenancy in common or tenancy in entirety means that the interest of each registered owner is determinable and severable; in a joint tenancy, the interest of each owner is indeterminable, each owns all and nothing.

23. The 1st applicant stated that, ***“I have used plot No. 44 B Nkubu Township since 2008 to date. I have been there with my sister called Judith Nkirote. It was not officially subdivided between us two, but each is in her own section. In 2011, my mother went to offices of County Government and stated her portion should be transferred to me. Judith Nkirote objected and it never happened.”*** AW2 and AW3’s testimonies were corroborative of the 1st applicant’s assertion that the deceased herein had given her, her share of plot No. 44 B.

24. Conversely, the petitioner in her testimony stated that, ***“Plot No. 44 B was for Judith and Gladys. They had joint***

ownership. Gladys passed on. Judith Nkirote remained as the sole proprietor.”

25. I find that the share of the deceased herein in Plot No. 44 B, was her distinct share, as a beneficiary herself, of the estate of her husband, and therefore the doctrine of survivorship could not be properly invoked.

26. To that end, I find that the grant herein was obtained fraudulently through concealment of the material fact that the share of the deceased herein in Plot No. 44 II B Nkubu formed part of her estate and was available for distribution under intestacy.

27. The upshot from the foregoing analysis is that the application dated 13/1/2022 is merited and it is allowed in terms of prayer 4 thereof:

1. The certificate of confirmation of grant issued on 17/10/2018 is hereby amended to include the share of Plot No. 44 II B belonging to the deceased herein.
2. The said share shall then devolve to Rachel Ngugi M’Kwaria, the 1st applicant herein.

**DATED AND DELIVERED AT MERU THIS 16TH DAY OF
DECEMBER, 2025**

S.M. GITHINJI

JUDGE

APPEARANCES:-

Miss Mutema holding brief for Mr. Arithi for the Petitioners.

Firm of Charles Kariuki is for the Objector (absent).

Mention on 6/7/2026 for confirmation of transmission and closure
of the file.

S.M. GITHINJI

JUDGE

16/12/2025