



REPUBLIC OF KENYA



**In re Estate of Mururu Rimbitu (Deceased) (Succession Cause
599 of 2009) [2026] KEHC 483 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 599 OF 2009
SM GITHINJI, J
JANUARY 28, 2026
IN THE MATTER OF THE ESTATE OF MURURU RIMBITU (DECEASED)**

BETWEEN

**MARTHA REGERIA MAINGI 1ST APPLICANT
ESTHER NTIRINGA MUTWIRI 2ND APPLICANT
PETER MWENDA 3RD APPLICANT**

AND

**IBRAHIM GITONGA JACOB 1ST RESPONDENT
ZACHARY KIMATHI MAINGI 2ND RESPONDENT
ANASTASIA GACHIUKI 3RD RESPONDENT
JACKSON KINYUA NTEERE 4TH RESPONDENT**

RULING

1. For determination is the amended Summons for revocation of grant dated 1/2/2012 under section 76 (b) of the *Law of Succession Act*, Rules 44, 17 (8), 59 (5), 67 and 73 of Probate and Administration Rules, seeking that:
 1. Spent
 2. The grant of letters of Administration issued to Anastasia Gachiuki And Jackson Kinyua Nteere on 13th May, 2010 and all the subsequent orders be revoked and/or annulled pending the hearing and determination of this application and/or further orders of this honourable court.



3. This Honourable court be pleased to cancel and/or revoke title Nos Nyaki/Mulathankari/2766 And 2767 being sub-divisions of L.R. No. Nyaki/Mulathankari/131 to revert to the deceased names Mururu Rimbitu pending hearing and determination of this application and/or further order of this honourable court.
 4. This honourable court be pleased to place inhibition orders over L.R Nos Nyaki/Mulathankari/2766 And 2767 resultant sub-divisions of Nyaki/Mulathankari/131 until further orders of this court.
 5. This honourable court be pleased to order consolidation of HC SUCC. 538 of 2008 with the instant HC SUCC 559 of 2009 for unanimous hearing and determination.
 6. This honourable court be pleased to grant a temporally court injunction restraining the respondents, their agents and/or anyone or persons working under their behest from barring entry, utilization and/or any interference from possession and occupation of land parcels Nos Nyaki/Mulathankari/2766 And 2767 resultant sub-divisions of Nyaki/Mulathankari/131 until hearing and determination of this application or further orders.
 7. This honourable court do make any other just and further orders for the ends of justice.
 8. Costs of this application be provided for.
2. The application is premised on the grounds that the respondents filed this cause secretly and grossly misled the court, leading to the omission of the applicants and L.R No. Nyaki/Giaki/653 from distribution. The respondents failed to disclose the pendency of High Court Succession Cause No. 538/2008, which was a pure conspiracy to defeat justice and completely alienate the applicants from their entitlement. The respondents forged their signatures in the consent, and have now evicted them from their homes, rendering them homeless and destitute.
 3. The 1st respondent swore a replying affidavit sworn on 20/2/2012 in opposition to the application. He averred that on 27/11/2008, he bought 2 acres out of L.R No. Nyaki/Mulathankari/131 from the 3rd and 4th respondents, with the full knowledge of the clan members, the applicants and the area chief. After he obtained a title deed to his share, to wit L.R No. Nyaki/Mulathankari/2766, he took possession thereof, demarcated it and evicted trespassers through the court process. The 3rd and 4th respondents moved out of the land after buying parcels of land elsewhere, and he prayed for the dismissal of the application.
 4. The 3rd respondent swore a further affidavit on 20/2/2012 in opposition to the application. She averred that the land in dispute was shared equally between the 3 sons of M'Rimbutu, and they sold their share to the 1st respondent. This cause was filed openly with the full knowledge of the applicants, and when they all attended the confirmation hearing, they did not raise any objection. In her view, the applicants should pursue their claim from Zachary Kimathi, who represented their house.
 5. The 4th respondent filed a witness statement dated 19/11/2024 in opposition to the application.
 6. The 2nd applicant swore a further supporting affidavit on 15/2/2021 in support of the application. She contended that each brother of the deceased herein had his own distinct parcel of land, and at no particular time was the deceased registered as a trustee for them.

Oral Evidence

7. AW1 Esther Ntiringa Mutwiri, the 2nd applicant herein, adopted her supporting affidavit sworn on 1/2/2012, and her further supporting affidavit sworn on even date as her evidence in chief and



produced the documents filed therewith as exhibits. She told the court that, Mururu Rimbitu, the deceased, was her father, Martha Regeria, the 1st applicant herein (now deceased), was her mother and Peter Mwenda, the 3rd applicant, is her nephew. Jane Karimi and Zachary Kimathi are her only surviving siblings and they were brought up in her father's land to wit. L.R No. Nyaki/Mulathankari/131, which was subdivided into L.R Nos. Nyaki/Mulathankari/2766 and 2767 and L.R. No. Nyaki/Giaki/653 was reverted to the name of the deceased herein. Her interest is in LR. No. Nyaki/Mulathankari/131 and succession cause No. 538/2008 was stayed when this cause was filed by the 3rd and 4th respondents, without their involvement. The deceased was not holding the land in trust for his brother, since his said brother had his own parcels of land. The land has now been subdivided into 12 portions, some of which have been sold by the 1st respondent. While this cause commenced and confirmation was done during the lifetime of her mother, her mother neither participated therein nor got any share thereof, and the clan did not state that the land was for the 3 brothers. Zachary Kimathi Maingi (now deceased) was not given any land to hold in trust for her and her mother.

8. RW1 Anastacia Gachiuki, the 3rd respondent herein, adopted her replying affidavit, sworn on 12/20/2020 and a letter to her advocate as part of her evidence in chief. She told the court that the 2nd applicant was a daughter of her brother, and this cause was filed with the knowledge of the 1st applicant. The land was subdivided to Zachary Kimathi Maingi, Jackson Kinyua Nteere, and her, and she and Jackson Nteere sold their shares after the grant had been confirmed. The deceased herein was the father of her husband, namely Elias Kaberio, and the deceased gave land to all his sons, including her husband. This cause was filed with the consent of the entire family, and they were all in court. The 3 resultant subdivisions of Land parcel No. 131 were given to Zachary Kimathi, Ntere and Kabeche, who then sold the said portions and bought land elsewhere where they have settled. The chief indicated in his letter how the land should be shared, and everyone was present. Esther Ntiringa was married elsewhere, and they did not evict them from the land.
9. RW2 Jackson Kinyua, the 4th respondent herein, adopted his statement as his evidence in chief. He told the court that the deceased was his uncle and the 3rd respondent is his aunt. He and the 3rd respondent filed this cause, but he did not know whether, in law, he was entitled to do so in his capacity as a nephew of the deceased. His father, Ntere Rimbitu was given parcel No. 728 by his grandmother on 25/10/1967, when the deceased herein also got his land. The land was registered in his name, though his mother who is alive, sold it to Ibrahim Gitonga Jacob, and bought land elsewhere. He was not aware of the previous cause in relation to this estate, and this cause was filed with the knowledge of the family of the deceased herein, who were represented by Kimathi. The elders distributed the land, and while the mother of Kimathi and Esther Ntiringa lived there, they were evicted by the purchaser, Ibrahim Gitonga Jacob.
10. The application was canvassed by way of written submissions, which were duly filed by counsel.

Disposition

11. Having considered the application, the affidavits, the oral testimonies, the submissions on record and the authorities relied on, I find the issue for determination to be whether it is merited.
12. 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.”

13. In his introductory letter dated 28/11/2008, the chief of Mulathankari location listed Maritha Regeria Maingi (now deceased) – widow, Esther Ntiringa Mutwiri – daughter, Zachary Kimathi Maingi – son and Jane Karimi – (deceased), as the beneficiaries of the deceased. The chief noted that, “The deceased who is registered to the said Parcel of land, should have the same share with the following deceased brothers, who are also deceased and have the following family – Jackson Kinyua Nteere, Anastasia Gachiuki who agrees to sell to Mr Ibrahim Gitonga Jacob and the other family to sell to Stephen Kagute.”
14. In their affidavit in support of the summons for confirmation of grant, the 3rd and 4th respondents proposed that the estate property be shared between the 1st and 2nd respondents.
15. During the hearing of the summons for confirmation of grant, the court noted that all the beneficiaries were present and they had duly executed the requisite consent.
16. It is contended that the 3rd and 4th respondents sold their respective shares of the estate property to the 1st respondent, while the 2nd respondent retained the share of 1.35 acres on behalf of his family.
17. The 2nd applicant conceded in her testimony that, “Peter Mwenda is a son of my deceased sister. We are 3 children in our family. The other Jane Karimi and Zachary Kimathi. The others deceased. I remain with Peter Mwenda. The Title Deed read Ibrahim Gitonga Jacob and Zachary Kimathi Maingi, who is my brother. My brother had been given 0.5 acres. Ibrahim Gitonga Jacob got 3.5 acres.”
18. The 3rd respondent corroborated the 2nd applicant’s testimony when she stated that, “The land was subdivided to myself and Zachary Kimathi Maingi. Zachary Kimathi Maingi held his father’s share. Kinyua Nteere also got his father’s share and myself my husband’s share. I together with Jackson sold our parcels to Gitonga.”
19. Notably, the 1st applicant, who is now deceased, actively participated in this cause from its inception and expressly consented to the proposed mode of distribution on 15/11/2010. The 2nd applicant similarly signed the consent to confirmation of grant, and the applicants’ contention that the filing of this cause was shrouded in secrecy and that some beneficiaries were excluded from the distribution is misconceived.
20. I find that the respondents proved on a balance of probabilities that the applicants participated in these proceedings, and voluntarily consented to the mode of distribution.
21. Needless to state, a considerable amount of time has lapsed since the grant was confirmed way back in 2010, whereas the instant application was filed in 2012.
22. Accordingly, the applicants’ recourse, if any, lies against the 2nd respondent herein.
23. The green card in respect of L.R No. Nyaki/Giaki/653 shows that M’Itambu M’Rimbitu acquired title thereto in 1988. That property is thus not estate property capable of distribution to the beneficiaries. Whether the said acquisition and transfer was fraudulent or otherwise is not a question that falls within the jurisdictional purview of a probate and administration court.



24. The upshot from the foregoing is that the application dated 1/2/2012 is in want of merit, and it is hereby dismissed. Each party to meet own costs in this application.

DATED AND DELIVERED AT MERU THIS 28TH DAY OF JANUARY, 2026.

S.M. GITHINJI

JUDGE

Appearances:

Miss Mugo for the Applicant (absent)

Mr. Kimathi for the Respondent (absent)

