



REPUBLIC OF KENYA



**In re Estate of Aritho Rincuni (Deceased) (Succession Cause
304 of 2003) [2025] KEHC 867 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 867 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 304 OF 2003
EM MURIITHI, J
JANUARY 30, 2025**

BETWEEN

ISAACK KITHAMBURU M'ARITHO PETITIONER

AND

BEATRICE KAMBA 1ST OBJECTOR

CELINA KARIANYAMA 2ND OBJECTOR

JOANINA KIORO 3RD OBJECTOR

DAMARIS MUKOMUNENE 4TH OBJECTOR

WINFRED KANANU 5TH OBJECTOR

JOTHAM MURERWA 6TH OBJECTOR

BERNARD KIMATHI 7TH OBJECTOR

REBECCA MPINDA 8TH OBJECTOR

RULING

1. By summons for revocation of grant under certificate of urgency dated 2/10/2020 under section 76 of the *Law of Succession Act* and Rules 44 and 73 of the Probate and Administration Rules, the objectors seek that the grant of letters of Administration issued to the petitioner herein Isaack Kithamburu M'aritho and confirmed by this Court on 13.02.2006 be revoked.
2. The application is premised on the grounds that the proceedings to obtain the grant were defective in substance and the cause was filed secretly with intent to defraud. It is averred that the grant was obtained fraudulently by making a false statement or by concealment from the court of something material to the case. It is further averred that the grant was obtained by means of an untrue allegation



of a fact essential in law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

3. In her supporting affidavit sworn on even date, the 1st objector avers that the deceased herein was their father while the 8th objector is one of the wives of the deceased. Since each wife had several children, the family had agreed that all the properties be fairly distributed amongst them, but they were surprised to learn that the petitioner had obtained the grant, sold all the estate properties to their exclusion and left out some properties. The petitioner concealed from the court their existence and that of the 8th objector, who is alive in order to obtain the grant, and they pray for the revocation thereof to enable all the beneficiaries share in the estate.
4. The 1st objector swore a further affidavit on 5/7/2021 questioning the validity and authenticity of the alleged will, and prays for the same to be invalidated. She urges the court to revoke the grant which effectively disinherited them and issue a fresh one, to ensure fairness in the distribution of the estate.
5. The petitioner vehemently opposed the application vide a replying affidavit sworn on 22/4/2021. He avers that all the beneficiaries were aware when the proceedings to obtain the grant were commenced and there was no intention to defraud anyone. The deceased had before his death willed away his properties in the presence of Geoffrey M’etari, Chief Muriuki and Antony Manyara. The distribution of the estate was done to the male children and to some grandchildren as the deceased desired, some of whom have already sold their portions. It is very late in the day after new titles have been issued, land subdivided and developments done for his sisters, who are married, to come to claim.

Statements

6. The 8th objector filed her statement on 23/9/2021 in support of the application. She contends that she is one of the wives of the deceased, who died intestate. She is healthy, strong and alive albeit aged, despite the petitioner’s malicious claims that she is deceased. She only learnt of this cause after she was evicted from the estate and forced to rent out a house. They agreed that the estate properties would be fairly distributed so that each house would have its rightful share.
7. Geoffrey M’Etari and Antony Manyara filed their witness statements dated 24/9/2021 urging that they were present when the deceased made his will. Antony Manyara avers that he executed the will in the presence of the deceased and he subsequently called the family members to inform them of its contents.

Oral Evidence

8. OWI 1 Rebecca Mpinda testified that, “I come from Kangeta. I am not able to work. The deceased Aritho Richuni is my husband. Isaac Isaack Kithamburi is my son. On 23/9/2021 I filed a statement. This is my statement. I signed I pray it be adapted as evidence. I pray for share in the deceased estate as his wife I did not get any share yet the land is mine. The petitioner Isaac Kathamburu gave land to the sons and left out the daughters.”
9. On cross examination, she stated that, “Paragraph 8 – Isaac got a grant and sold the whole land? He give one portion to his family and sold the other part. He sold 6 acres, What has not been sold is 15 acres. The division of the land was done a long time ago. I cannot remember the date. It was about 2013 when President Uhuru first came into Government. After taking the land, the beneficiary were planted trees, build house? No they have not constructed. They also have not planted any trees. They only cultivated the land and they only come and go. They have not constructed houses. When I used to cultivate, the Petitioner said he would lease the land only to discover he was selling the land. Do you know the buyers? I know Kimamia and 2 others who I do not recall their names. I only know Kimamia by name. I do not know the other by name. They are 2 of them. 3 people have bought land. Did you



report or complain to the Chief? Yes I went to complain to the Chief. After the chief officer I came to court. I went to the Chief before I came to court. Do you have any document by your advocate objecting to sale of the land? I came to court when they were cultivating the land. I thought the lawyer would deal with the matter. I went to Kangeta when the land was being leased. Aritho had only 1 wife who is me. Isaac Kitamburu is my son by birth, I had other sons. They were all 10 sons are dead the ones who are living are 8 only 2 died. All the 8 have land belonging to their father. The daughters do not have any share. There were 5 female children. They were 6 and 1 died. All the female children are married? Yes they are married. They do not have a share on their father's land. Did female inherit in accordance with Kimeru customary law? They used to get even now we are entitled to a share. Had you separated with your husband while he was alive? There was no time I was ever separated from my husband. I could not separate with my husband with all the many children. You could have used part of the land reserved for your children? They were selling the land without giving me a share. My husband had a shamba at Mulika, Kioriwe, and a plot at Mulika and Gokirai in the beginning, I then went to live at Mulika where I got a Posho Mill and shop and hotel. They were all sold by my son. Kithamburu. Petitioner sold the land at Gokirai first I bought search certificate on the parcel of land. Will or wishes on statement by deceased? It is not true. I know because I am his wife. My claim on my husband's shamba is for me and my daughters who did not get. There is no children who are special. I have not been pressured to come to court. I want them to come to get their share because I am the one bothers them. I pray that the land be given to me so that I can distribute it equally to the children. The buyers did not know they were buying. I thought they were leasing. I came to court when I discovered that they were purchaser. Isaac bought the matter to court and divided the land according to the will of the deceased? It is not true the documents are lies. He did not call or inform me. He would have told me because I am his mother."

10. OW2 Beatrice Kamba testified that, "I hails at Ciothirai and I reside at Giaki. I work as a farmer. M' Aritho is my father. Isaac petitioner is my father. I recorded an Affidavit dated 2/0/2020 and a Further Affidavit of 5/7/2021. I pray to rely on the documents as evidence in Chief. I pray the court to give us our share in the estate I pray for a share of my other children the 5 daughters.

My sisters are.

- a. Selina Karanyama
- b. Damaris Mukwa Munene
- c. Joanina Kioro
- d. Beatrice Karambu (myself)
- e. Faith Karuki (Deceased) left a child Winfred Kananu

We pray for our share in our father's Estate."

11. On cross examination, she stated that, "My mother is Rebecca Mpinda M'Aritho. My mother is the elder wife. You father had two wives? It is our father who went to the plot at Mulika. I do not know whether he had another wife there. I have studied up to class 8 in 1986. I know how to read and write. Our father died in 2003. What did you do to pursue the assets? We did not know when they filed succession proceedings. I live at Giaki in a rental plot. The children had been married and later separated with their husbands. Why did you not pursue your share in the distribution? We did not know about succession proceedings. Is it because you have now? Yes, we did not have money to come to court and we did not have money to come to court. We did not know whether the succession proceedings have been done. There was a family meeting to distribute? We have never called the meeting. We did not know the court procedures. We were young children. I am 49 years old now. What did you sisters do to



pursue the land? We found people on the shamba where our mother used to cultivate. I was 46 years. From 2003 to 2020 did you take any action on the land? We had problems and could not raise money to get a lawyer to come to court. Our brothers all have shambas. There are person who have bought the land? We have heard both land has been sold and we have seen people on the land. Did your father write his wishes? I do not know whether there was a will. Do you know it was your father who said the daughters should not take land and it should go to the sons? In 2003 according to Kimeru customs were daughters inheriting their fathers. Yes. What lie has Isaac told? I sack said our mother was deceased yet she is alive. Did you know why the chief did not record your names because your father had said only sons to get the land? We did not know when they went to the chief.”

12. PW1 Isaac Nthamburi testified that, “I come from Ciothirai. I filed Replied Affidavit 23/4/2021. I rely on this facts set out there. My father had 2 wives Ciombua and Rebecca Mpinda. Rebecca is the first wife. They are both alive. Rebeca has 6 children Ciombua had 4 children two girls and two boys. The assets of the deceased were two one Mulika and the other at Ciothurai. The land at Ciothurai is 20 ½ acres after survey. Mulika is 1 acre. The objector states you did not inform them when filing petition? They knew about the filing of the petition. Our mother is Rebecca Mpinda. She lives at Kangeta, she is married and lives with another family. She was married in 1982, she left my father home in 1982 before our father died. Our father died 2001. Our mother has never come back to our father’s home since 1982. Agnes works in her own business but she visits. She separated with our father. Rebecca did not even come from our father’s burial. The sisters do not live on our father’s land, our father left when they were already married. I told all my six sisters. My father said we would not give land to the daughters so that they do not leave their marriage has to come and seek land there. I had told everyone expect the children of my mother with the new husband at Kangeta. I went to Kangeta to present to the Chief at Kangeta request by the Chief Ciothirai to get confirmation that my mother had been married there. The chief at Kangeta wrote a letter that Rebecca is a wife of Ngamburu I got the letter and give to chief of Ciothirai and he gave as a letter to file succession in this case. It is for this reason why Chief Ciothirai did not indicate her on the letter. My sisters are not on the letter because our father said he would not give land to the daughters. He had said this at home. When our father felt ill, he sub-divided the land among his sons. He did not give land to any of his wives our daughters. The meeting was not a family gathering where I had come as witness what our father had to say. Our father subdivided the land and said he would not give daughters land as it would make them leave their married lives. I therefore excluded the daughters as I had not been told to give them. They are still living with their husband. I did not hide any information to the daughters and the assets of Estate. Submission filed in 2003. We got the ground and subdivided land. Titles were issued to the person named in the grant. They are using the land. The daughters complained after the titles were issued. Some of the heirs here sold their land. I am the one who sold the remaining of the said measuring 2.5. (2 ½) acres. There is land that I gave to a bother of mine who had not been given by my father. The other Patrick Mwenda has sold his land. The applicants did not oppose the sale of the land. We went to the consent board at Thuraa. I had not been told by our father to give land to our sisters. I oppose the application. My father wrote a will I have attached it to the Affidavit. I the will our father did not give any land to our sisters. When our father was writing the will, there where three elders of the village two who had since died. One of the Aunty Manyara recorded a statement in court. Aunty is a witness in this case. The Mulika shamba are plots but our father sold them. My mother said I sold the land but she could not know about it as she left in 1982.”
13. On cross examination, he stated that, “Replied Affidavit of 27/4/2021 Paragraph 22- deceased had 3 wives. I only said that he had two wives not that he left them at home. I am the one who filed the succession with my brothers. It is the chief who wrote the letter. I did get a letter from the chief indicating only the sons. I took it to the land’s office not in court. Petition states your mother is dead?”



It is not correct. I did not state that. Our mother is alive. [Witness is referred to list of survivors in the Affidavit in support of the Petition dated 30/3/2005. We did not mention all the members of the family. I recorded those who had been given land. I also did not mention the children of the other family as they had not been given land. I did not know I recorded the record all the children of the deceased. Will of the Deceased. When presented the petition for grant was for intestate. Why did you not bring it as petition for proof of will. The will was written by our father and he placed the thumb print. The deceased knew how to write but placed the thumbprint. I went to Kangeta to get a letter from the chief to indicate that Rebecca was not wife of the deceased. I got the letter and I gave it to the chief. Did you bring the letter to the court? I did not bring the letter to the court. There was someone who helped me file the petition. I do not know whether he followed the law in filling the petition.”

Submissions

14. The objectors maintain that the written will the petitioner is relying on was not attested to and witnessed by any witnesses and therefore the same must be invalidated. They urge that where there exists a valid will, the petitioner ought to petition for grant of probate with a will annexed and not letters of administration intestate, and cite *Joseph Sang & 2 Others v Jepchirchir Tuiya & Another* (2015) eKLR. They insist that the proceedings to obtain the grant were defective in substance as the petitioner concealed from the court their existence as beneficiaries of the estate, thus disinheriting them on the basis of their gender, and cite *Re Estate of Solomon Ngatia Kariuki (Deceased)* (2008) eKLR and *Peter Karumbi Keingati & 4 Others v Dr. Ann Nyokabi Nguthi & 3 Others* (2014) eKLR.
15. The petitioner did not file any submissions.

Analysis and Determination

16. The issue for determination is whether the grant should be revoked.
17. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- 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.”



18. Whereas the objectors contend that this cause was filed secretly without their involvement with a view of disinheriting them, the petitioner affirms that the distribution of the estate was done in accordance with the wishes of the deceased as captured by his will.
19. The alleged witnesses to the will namely Geoffrey M’Etari and Antony Manyara have filed witness statements to that effect. The question that abounds is whether the two qualify as independent witnesses by dint of section 11 of the *Law of Succession Act*? That section provides as follows:
20. Section 11 of the *Law of Succession Act* provides that;
- “No written will shall be valid unless:
- a. the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
 - b. the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
 - c. the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”
21. In *Re Estate of GKK (deceased) (2013) eKLR*, the court (Isaac Lenaola J as he then was) held that;
- “From a clear reading of Section 11(c) of the Act, to be present at signing means that the witness must be capable of seeing the testator sign the Will and thereafter attest to that fact. The witnessing is to the signature of the testator and cannot be anything else.”
22. While the law allows another person to execute the will on behalf of the deceased, as in this case, that execution must be done in the presence of the testator. Having executed the will on behalf of the deceased and in his presence, Antony Manyara was removed from the realm of an independent witness for purposes of section 11 (c) of the *Law of Succession Act*. The drawing of the purported will is very problematic because firstly, the alleged witnesses thereto are not named therein and have only been belatedly introduced by the petitioner in his response and their subsequent statements, and secondly, the same is written in Kimeru without any translation. Suffice to state, the petitioner petitioned for grant of letters of administration intestate and proceeded that way to confirmation.
23. It is thus clear from the foregoing that the will is invalid for all purposes and intent.
24. The 1st objector and the wife to the deceased was very candid in her testimony that, “I pray for share in the deceased estate as his wife I did not get any share yet the land is mine. The petitioner Isaac Kathamburu gave land to the sons and left out the daughters.” She categorically denied the existence of any will by the deceased terming the alleged will produced by the petitioner as a forgery.
25. Her sentiments were echoed by the 2nd objector, who testified as OW2.



26. In his response on why he had left out the objectors from distribution, the petitioner stated that, “Our mother is Rebecca Mpinda. She lives at Kangeta, she is married and lives with another family. She was married in 1982, she left my father home in 1982 before our father died. Our father died 2001. Our mother has never come back to our father’s home since 1982...The sisters do not live on our father’s land, our father left when they were already married.”
27. The court notes that the distribution herein was deliberately and purposefully skewed towards disinheriting the daughters and widow of the deceased, solely based on their gender. *The constitution* and courts alike have innumerable abhorred and outlawed discrimination in distribution of an estate on the basis of gender or marital status. Section 29 (a) of the *Law of Succession Act* in recognizing children does not classify them on the basis of gender or marital status. The petitioner deliberately concealed from the court the fact that the 8th objector was alive and that the deceased was survived by other beneficiaries, and thus the grant herein is a perfect candidate for revocation. Whilst it is urged that the petitioner left out some of the properties of the deceased, no evidence in the form of certificate of official searches or title deeds has been adduced to show that the said properties indeed form part of the estate.

Orders

28. Accordingly, for the reasons set out above, the applicants’ application dated 2/10/2020 is merited and it is allowed in the following terms:
- a. The grant of letters of administration intestate issued to the petitioner on 24/11/2003 and confirmed on 13/2/2006 is hereby revoked.
 - b. A fresh Grant of Letters of Administration Intestate shall issue to the petitioner and the 1st objector jointly.
 - c. Either party is at liberty to apply for confirmation of the grant within sixty (60) days from the date herein, and the other may file a Protest in accordance with the Probate and Administration Rules.
 - d. There shall be no order as to costs.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF JANUARY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. D.M Nyamu Advocate for Objectors.

Mr. M.G. Kaume Advocate for the Petitioner.

