



REPUBLIC OF KENYA



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In re Estate of the Elizabeth Matwoi Ngeywa (Deceased) (Succession Cause 226 of 2014) [2025] KEHC 5341 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 226 OF 2014**

AC MRIMA, J

APRIL 30, 2025

IN THE MATTER OF THE ESTATE OF THE ELIZABETH MATWOI NGEYWA (DECEASED)

BETWEEN

MARY ALUNGATA OKODOI PETITIONER

AND

MICHAEL MATATA OBJECTOR

RULING

Background

1. On 15th May 2014, Mary Alungata Okodoi, the Petitioner herein, petitioned for Grant of Letters of Administration Intestate in the Estate of Elizabeth Matwoi Ngeywa, (hereinafter referred to as ‘the deceased’). She listed the beneficiaries of the deceased’s as Michael Matata, the Objector herein, Nelly Cheptwan Matata, Valery Chesegut Matata and Dennis Bera Matata.
2. The Letters of Administration were issued to her on 9th March 2016 and subsequently, on 2nd February 2017, the Grant was confirmed and a Certificate of Confirmation issued. The property identified as Plot No 49 Maridadi Settlement Scheme (hereinafter referred to as ‘the land’) formed the sole estate of the deceased and the Petitioner was granted 4 acres thereof while the Objector inherited 1 acre.
3. Dissatisfied with the mode of distribution, the Objector lodged the Summons for Revocation dated 10th December 2020. It was supported by his affidavit deposed to on a similar date. He sought the following reliefs: -
 - i. That this Honourable Court be pleased to revoke the letters of Administration and confirmation of grant issued on 2nd February 2017.



- ii. That pending hearing and determination of this application, this honourable court be pleased to issue orders restraining any dealings over land parcel No Plot No 49 Maridadi settlement scheme.
4. In the grounds in support of the Summons, the Objector stated that the grant was obtained fraudulently, through concealment of material fact and that the Petitioner failed to diligently administer the estate, leaving out other beneficiaries. In the affidavit, he deposed that he did not authorize the Petitioner to file the Succession Cause since he is the one authorized to do so. He further stated that he did not consent and was not agreeable to the mode of distribution. He asserted that the Petitioner did not consult family members in the Cause.
5. On 2nd June 2021, by consent, the Objector and the Petitioner were appointed the Administrators of the deceased's estate. Accordingly, the grant issued on 2nd February 2017 was revoked and the distribution therein stayed. The Court ordered the parties to file their preferred mode of distribution.
6. The objection was heard by way of *viva voce* evidence where the Objector testified and called 3 witnesses and the Petitioner also testified and called 2 witnesses.
7. This Ruling is, therefore, on the mode of distribution of the deceased's estate.

The Objector's case:

8. The Objector filed an Affidavit dated 8th June 2021 and another one dated 22nd October 2022. He deposed that the Petitioner was his sister-in-law married to his deceased brother, Humphrey Cheboto Matata (hereinafter referred to as 'Humphrey') while he was a son to the deceased. The Objector asserted that before her mother died she was unwell and that she had offered the land as security to one James Kamau Githiomi (hereinafter referred to as 'Githiomi') who provided the finances for the mother's treatment on an understanding that the sums will be refunded.
9. Through his oral evidence, the Objector who testified as PW1, stated that the deceased had 11 children being 4 sons and 7 daughters. He further stated that prior to her death, the deceased, himself and his wife Mary Chemutai were the only ones who lived on the land since Humphrey lived on a piece of land in Kitale Main Prison farm more so that Humphrey had also been given another parcel of land in Bungoma County known as LR No Elgon/Kapkatee/50. The Objector testified that the Objector was only married to Humphrey after the death of the deceased and as such she knew nothing of the deceased's transactions on the land. The Objector further stated that Humphrey did not live long with the Petitioner and that when Humphrey died the Petitioner was again married by a Teacher and has since not lived with the family of the deceased in this cause, but with her subsequent husband.
10. It was his case that he had been instructed by the deceased and entered into the agreements with Githiomi given that the deceased was unwell. The initial agreement was in 1979 where the sum of Kshs 70,000/- was paid. The second payment was on 4th October 2010 and the sum of Kshs 240,000/- was paid and later on 20th November 2018 and on other dates, other payments were made culminating with the total of Kshs 900,000/-. The Objector posited that the deceased had challenges in refunding the said sums to Githiomi on account of her continued failing health and since none of the family members were able to make good the refunds, the deceased then informed the family and Githiomi that even if she died, her children should refund the sums failure to which the land be sold to Githiomi forthwith.
11. According to the Objector, when the deceased died, the family could not repay the sums to Githiomi and the land was eventually sold to Githiomi in accordance with the wishes of the deceased. That was during the lifetime of Humphrey and there was consensus in the family to that end among the three children of the deceased. The family members then shared the remainder of the purchase price and



- the matter was settled with Githiomi taking possession of the land. The agreements were produced in Court during the trial.
12. On cross-examination, the Objector reiterated that the Petitioner was married to Humphrey after the death of the deceased and lived with her then husband in Bungoma County and that she only began her intrusion on the land after her husband's death. The Objector was alive to a case instituted by the Petitioner before a Land Tribunal and stated that he objected to the award (marked DMFI 1) which was subsequently filed in Court.
 13. It was the Objector's evidence that whereas the Petitioner instituted Citation Case No 9 of 2009 seeking to compel him to petition for Letters of Administration, he was not served with the Court documents and he remained unaware of the succession cause. He denied that he was claiming the land on behalf of the Githiomi.
 14. The Objector further clarified that all the three children were settled by the deceased prior to her death and that whereas Humphrey was given land in Bungoma, he was given a parcel of land in Mt. Elgon where he resided with her sister Mary. The Objector vehemently denied that he evicted the Petitioner from the land and affirmed that the Petitioner had not lived thereon, but Githiomi and that the Petitioner was just out to cause problems in the family despite the deceased having taken care of her affairs well before death. He further stated that the structure which Githiomi pulled down on the land belonged to him and not the Petitioner as the Petitioner never lived on the said land, but only and unfairly intruded after her husband's death.
 15. On re-examination, the Objector clarified that the family acted in line with the wishes of the deceased and received money as proceeds from the land from Githiomi and that the remainder of the purchase price was shared among the beneficiaries and that, to date, no one was willing to refund Githiomi his money, if the family was to rescind the wishes of the deceased. The Objector prayed that it was only proper that Githiomi be granted the land to bring the matter to closure.
 16. Chemutai Mary Matata, testified as PW2. She was the Objector's wife and she adopted her statement as part of her evidence. It was her testimony that she resided on the land with her husband and the deceased since 1978 until 2007. She recalled that sometimes in the 1980's the deceased fell ill and since she needed money for treatment and she had none, the deceased sent for Humphrey to call Githiomi and that after discussions, it was reached that the land be used as security as Githiomi would advance money to the deceased for treatment and which money the deceased would refund and if not, then the land would stand sold to Githiomi. To that end, PW2 was aware of an agreement signed in 1985 for KShs 150,000/-. She, however, was not involved in any other like transaction.
 17. PW2 also confirmed that the Petitioner was married after the death of the deceased and that she never lived on the land and only began laying claim on the land after the death of her husband. To her, it was Githiomi who took over possession of the land in 2007 when the Objector and herself moved out after the sale of the land to Githiomi. She was aware that the Petitioner lived in Bungoma county, on a parcel of land given to the husband by the parents, when she was married to Humphrey and she reiterated that the Petitioner never lived on the land subject of these proceedings at any one time.
 18. In conclusion, PW2 stated that the Petitioner never met the deceased in her lifetime and that she was the one who took care of her until she died. She re-affirmed that, in all fairness, the land belonged to Githiomi, a position clearly made by the deceased before her death.
 19. On cross-examination, PW2 stated that when she was married to the Objector, they briefly lived at Teremi in Bungoma county before the Objector moved to stay with the deceased at the land since in



1978. She clarified that when she moved out of the land after the sale to Githiomi, it was Githiomi who demolished their mud house which they left behind.
20. In her evidence, it was the Petitioner who was causing problems in the family since she even cut the trees on the subject land without the authority of Githiomi. She denied that it was the Objector and herself who sold the land to Githiomi. On being shown the letter marked DMFI 4, a letter indicating that the land belonged to the Petitioner, she exclaimed that it was not true.
 21. James Kamau Githiomi testified as PW3. It was his evidence that the deceased was his neighbour in Maridadi Farm Scheme. When she fell ill, the deceased's son, Humphrey, approached him and asked that the deceased wanted to see him. To that end, he met the deceased where she asked for finances for treatment and she offered her land as security.
 22. Githiomi stated that he agreed to assist the deceased on the understanding that the deceased would refund the money and in default, her children would and in the event they were also unable to make good the refund, then the land will be sold to him. To that end, an agreement dated 20th February 1985 was executed by Humphrey on behalf of the deceased for the sum of Kshs 150,000/-. He clarified that the deceased died in 1985 after the first agreement and on pursuing his refund, the children were unable to repay and they agreed to sell the land to him where subsequent agreements were entered into. Githiomi confirmed that he paid the entire purchase price and produced the agreements as Exhibits JKG 1-5.
 23. It was Githiomi's testimony that he begun using the land in 2007 after completion of the sale and delivery of possession by the Objector who lived on the land with the deceased and his wife. He stated that the Objector had built a house and lived thereat but when he took possession, he demolished it. He reiterated that the Objector and Humphrey sold him the land. He denied that the Petitioner ever lived on the land.
 24. In reference to paragraph 5 of the Petitioner's Affidavit, whereas the Petitioner claimed to have been in 1988, he only saw the Petitioner in 2021 when she invaded the land with a gang of ten, destroyed the fence and cut all trees. Githiomi, however, reiterated that in paragraph 9, the Petitioner admitted that the land was sold to him.
 25. It was his evidence that he bought the land for Kshs 1 million and paid the entire amount. He denied being in forceful occupation of land and denied any knowledge of any succession proceedings instituted by the Petitioner until when the Petitioner descended on the land with goons and destroyed the fence and cut down the trees. Mr. Githiomi further stated that he was not aware of the Citation as well as the case in Kitale CMCC No 36 of 2008 between the Petitioner and the Objector.
 26. Githiomi re-affirmed that he executed the first agreement three years before the Petitioner was allegedly married. He reiterated that he bought the land pending the succession proceedings but more so on the strength of the deceased's word that if repayment was not made, the land be offered to him for sale. He prayed for full possession of the land since he bought it for value.
 27. On cross-examination, it was his evidence that he has been living on the land since he took over possession in 2007.
 28. Lazaro Mabat Wakhungu testified as PW4. He also adopted his statement as part of his evidence. He stated that he occupied Plot No 68 in Maridadi farm and that he was neighbour to the deceased and Githiomi. PW4 stated that he had been living on the land since 1972 and knew the deceased and her son Humphrey who both died and were buried on the land.



29. He claimed further that whereas the Objector lived on the land, the Petitioner never lived thereon at all. He confirmed it was Githiomi who was in occupation since 2007 and only got to know of the Petitioner when she invaded the land.

The Petitioner's case:

30. The Petitioner testified as DW1 and challenged the mode of distribution through her Affidavit sworn on 9th July 2021. She stated that the deceased allowed him to plough and utilize four acres of land according to Sabaot Customary law which allows the last born to take care of the mother. She deposed that the Objector and his wife never stayed on the land and that the Objector sold another piece of land in Saboti. She claimed that she was not aware of the land in Teremi and asserted that she should not be forced to stay on a strange land.
31. In her oral testimony, the Petitioner stated that the deceased died in 1985 and that her husband, Humphrey, died in 1997. She stated that she was married in 1988 and all along, lived on the land subject of these proceedings and that was where her husband and one of her children were buried.
32. The Petitioner denied that her husband neither signed any agreement nor was he given any money. She claimed that the handwriting in the agreement was not that of Humphrey. It was her position that the agreement was entered long after the death of the deceased. The Objector claimed to only have heard of a purchaser, one Githiomi, who destroyed her structures unlawfully, a fact to which she reported him and obtained OB against him and the Objector. It was her testimony that the Objector has never lived in the land as he lived in Teremi in Saboti the place where he was served with the Court documents. It was her testimony that she referred the case to a Land Tribunal where she was given four acres and the Objector was awarded 1 acre because he had other land in Saboti village. He urged the Court to abide by the findings by the Tribunal.
33. On cross-examination, it was her case that she lived in Maridadi village, but the Objector evicted her and demolished her house. She, however, admitted that she was not married in 1985. She further conceded that the deceased was unwell and was taken to Kenyatta National Hospital. She did not know where the money came from but heard the Objector saying that the deceased consented to the sale of the land. It was her evidence that she was evicted in 2007 by the Objector that she was the one who planted the trees in 1991, after she buried her child.
34. She was categorical that she was married in 1988 and before then she lived in the disputed land from when she was married until when the Objector evicted her after the death of her husband.
35. John Mika Wanyonyi and Janerose Chemotosi Ndiwa testified as DW2 and DW3 respectively. They adopted their statements as evidence and supported the Petitioner's testimony.
36. It was the Petitioner's case that she be allocated 4 acres of the land as per the decision of the Land Tribunal.

The Parties' submissions:

37. The Petitioner and the Objector filed written submissions dated 22nd January 2024 and 1st December 2023 respectively. The arguments therein will be engrained and considered in the analysis section of this decision.



Analysis:

38. Having carefully considered the respective parties' cases and evidence alongside the written submissions and the decisions referred to, the following two main issues arise for determination: -
- i. The propriety of the Petitioner's cause.
 - ii. Depending on the outcome in [i] above, the distribution of the deceased's estate.
39. A discussion on the issues now follow.

(a) The propriety of the Petitioner's cause:

40. The Objector vehemently argued that the Petitioner did not have the requisite locus standi in the estate of the deceased herein to agitate for her alleged entitlement since she was not a beneficiary of the deceased's estate, but a wife of a son to the deceased. Several decisions were referred to that end. On her part, the Petitioner contended that she took out Citation Cause No 9 of 2009 wherein she was allowed, by an order of this Court, to take out the administration of the estate of the deceased herein.
41. The jurisdictional competence of this Court to adjudicate over the distribution of a deceased's person property is, in the first instance, anchored on the fact that a party that comes to a Succession Court has the appropriate locus standi otherwise estates of deceased are likely to be opened up to people who are not entitled to benefit from such estates. This cautionary approach on the part of a Court goes a long way into protecting the rights of those entitled to the estates. Likewise, a Succession Court is also called upon to be vigilant and fair as not to disinherit a person entitled to an estate.
42. Courts have, over time, decided on the parties who are entitled to an estate. Such is confirmed in the various decisions referred to by the parties and many more. Once it is adjudged that a party lacks any locus standi in an estate then it all ends there. The party must exit the proceedings. Therefore, for this Court to fairly decide on this cardinal issue, there is need to have the Citation Cause No 9 of 2009 for perusal. It is only after such perusal that this Court will be able to make up its legal mind going forward.
43. As matters stand, I am long transferred from Kitale station and since the Citation file is at the said station, it will be most ideal that the matter proceeds further before the Judge in situ. I believe my brother Judge will find it comfortable to deal further since the evidence tendered has been summarized above.
44. In view of the foregoing, the following orders do hereby issue: -
- (a) The ruling on the Summons for Revocation dated 10th December 2020 is hereby deferred pending the perusal of the Court file in Citation Cause No 9 of 2009.
 - (b) The Hon. Deputy Registrar to avail the Court file in Citation Cause No 9 of 2009.
 - (c) The matter be fixed before the Hon. Presiding Judge for further orders on way forward.
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Wanyonyi Learned Counsel for Petitioner.



Miss. Arunga Learned Counsel for Objector.

Amina – Court Assistant.

