



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of M’Gaciuru Gaciuru (Deceased) (Succession Cause
329 of 2004) [2025] KEHC 7355 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 329 OF 2004**

EM MURIITHI, J

MAY 29, 2025

BETWEEN

MIRIAM KANG’ONDU PETITIONER

AND

JULIUS NGORE APPLICANT

JUDGMENT

1. By Summons for Revocation of Grant dated 4/2/2014 brought under section 76 of the [Law of Succession Act](#) and Rule 44 (1) of the Probate and Administration Rules, the applicant seeks that the grant of letters of administration issued to the petitioner herein, Miriam Kang’onde on 2/7/2007 be revoked and/or annulled.
2. The application is founded on the grounds set out in the application and supporting affidavit of Julius Ngore [also referred as Ngure in the testimonies], the applicant herein, sworn on the same date. He avers that the deceased was his elder brother and the petitioner’s husband. Although both pieces of land, the subject of this cause, belonged to their late father M’Ituri Baituri, they were registered in the name of the deceased herein. After his mother separated with his father, he was forced to leave home in search of employment in Imenti North District, but upon his subsequent return home, his father directed the deceased herein, in the presence of his late brother Gichunge, to transfer L.R No. ITHIMA/ANTUAMBUI/2XX0 (hereinafter referred to as the suit property) to him and retain L.R No. ITHIMA/ANTUAMBUI/1XX7.
3. Consequently, and in accordance with his father’s directive, the deceased herein pointed out to him the boundaries of the suit property and he took possession thereof. He constructed a semi-permanent house thereon and five temporary houses, where he lives with his wife and 7 children. He developed the suit property with the full consent and knowledge of the deceased herein, but the deceased herein occupied 1 acre thereof which he refused to vacate. The applicant avers that petitioner and her children filed this cause secretly without his consent and/or knowledge and forged his signature to hoodwink



the court to confirm the grant. The applicant claims that he is entitled to the entire suit property and not the 1 acre thereof as erroneously indicated by the petitioner. The petitioner unfairly distributed the estate to herself and her children without giving the applicant his true share, and he stands to suffer great irreparable damage unless the grant is revoked.

4. The applicant herein, Peter Ithalia M’Nabea, Joshua Mati Baimula and Mingaine Kuchiana swore further affidavits on 9/11/2018 in support of the application for revocation of grant.

Petitioner’s response.

5. In response to the application for revocation of grant, the petitioner swore a replying affidavit and a further affidavit on 18/4/2017 and 16/11/2018, respectively in opposition to the application.
6. Joshua Kithela, a former land committee member swore an affidavit on 18/4/2017 in support of the petitioner’s case. He refutes the applicant’s contention that the two parcels of land belonged to M’Ituiri Baituiri and insists that the same were owned by the deceased herein. He deponed that the applicant’s mother lived happily with her husband until her death, and the applicant voluntarily disappeared from home. The land committee member said that the deceased herein, the applicant and Gichunge were born to different mothers, and the applicant was given his own separate parcels of land by his father as his share of the family land. After the applicant returned home about 1970, the deceased paid his dowry and allowed him to settle on 1 acre of the suit property, where he lives with his family to date while the deceased established a matrimonial home on the 3 remaining acres thereof. Indeed, said the land committee, the petitioner’s daughter, her husband and his parents were buried on the suit property. The applicant wants to have a second bite of the cherry after suing the petitioner in Maua CMCC No. 226/13, which is still pending.
7. The land Committee member’s sentiments were echoed by M’Lombe Nchubiri and Joseph M’Aru M’Abwana, the petitioner’s neighbours in their affidavits sworn on 18/4/2017 and 2/10/2020, respectively.

Statements.

8. In her witness statement filed on 4/9/2018, Pauline Ncee M’Ituiri, a sister to the deceased herein, stated that their deceased father gave the suit property to the deceased herein so that he could subsequently give it to the applicant when he returned home. Upon his return home, the deceased herein surrendered the suit property to the applicant who took possession and constructed his homestead thereon. The deceased herein was given his own land at Miuine Village namely L.R No. ITHIMA/ANTUAMBUI/1XX7. The family land was shared out by their father in her presence and that of the other family members, and the petitioner should not lay a claim on the suit property.
9. Peter Ithalia M’Nabea, Joshua Mati Baimula and Mingaine Kuchiana reiterated that the suit property belonged to the applicant in their statements filed on 4/9/2018.

Oral Evidence.

10. PW1 Miriam Kang’onde testified de bene esse that, “I am a farmer. I am the petitioner in this case. I wish to rely on my Affidavit of 18.4.2017 together with all the documents filed by my advocate and attached to the affidavit. I also wish to rely on the Affidavit of 16.11.2018. I pray that the objection be dismissed.”
11. On cross examination, she stated that, “Mr. Julius Ngore was my brother in law, a younger brother to my husband. My father in law had parcels of land. They were 3 parcels being at Nkiriana, Miuine and Nguuyuyu. My father in law had three sons, my husband, Gichunge and Ngore. I know how the father



to my husband divided the parcels. Gichunge got the Nguyuyu. The land at Miutine was given to my husband. The land at Nkiriana was also given to my husband. Julius Ngore got one acre at Nkiriana - within Ithima/Antuambui/2XX0. It is not true the objector was to get Antuambui in whole. It was a lie. My husband when about to die told me to give to objector one acre even though he was not his son because he was his brother. It is not true the entire land was given to my husband to hold in trust for Ngore who was away. The homestead of the objector and his children are on the land, Ngore has a parcel of land away with a title. Ngore and my husband were born on the same land. According to Meru traditions the oldest son gets the homestead of parents. The children of Ngore (3) have built homes on the said land. I was there when the land was being shared. There was no meeting held by my father in law before he died. In my papers, I have said Ngore has three parcels of land but only I know the one neighbouring ours. The second one is at a place called Twong'o Twa Buae. The third parcel is at Nata. I have however not been to the parcels of land and I do not now who uses them. I have not seen Ngore on those parcels of land. It is not true Ngore is my late husband's heir because he said we gave him land. He was a brother to my husband. My husband while about to die said we give him one acre. The reason is because my husband had assisted Ngore to marry. He also allowed him to build on the land and to move later after children became big. It is not true that I am lying."

12. In re-examination, she stated that, "Ngore was given parcels of land by his father who was also the father to my husband. His father was M'Ituiri Baituri. The parcels are at Nkiriana, Twongo, Twa-buae and last was at Nata. I know where they are. He does not use all of them except one as he says he has no land. He can use the parcels if he wants to. The two parcels in this case are for my husband and they were adjudicated in his name. Ngore has no right to claim the whole land. Ngore has a nearby parcel with a title apart from the parcel No. 2XX0. My husband allowed Ngore to use 1 acre of 2XX0. He gave him. The rest of the shamba 2XX0 is used by me, my son John and his family. We use 3 acres and he uses 1 acre. In my papers, I called Ngore the son of the deceased because the papers were not prepared by a non advocate. The parcels of land belonging to Ngore are true and in accordance with green cards. Ngore has not complained about the green cards being fake."
13. PW2 M'Zombe Ntubiri adopted his affidavit of 18/4/2017 as his evidence in chief testifying that "I live at Kiriana village. I work as a farmer. I am related to the petitioner and the respondent as neighbours."
14. On cross examination, he stated that, "I am a neighbour to the parties in this suit. From my place to Ngure's place is 30 minutes' walk. I know the father of Julius Ngure and husband to Miriam Kang'onde. I do not know when he died. He was my age group. He was older than me by far. I could not according to Meru Customs stay close by the parties father. I was a young man. I was not there at the place he died. Before he died, I used to meet him. I do not recall any date when we met. Any meeting for distribution of Ngure's father distributing his property? No, I was never there at any meeting. I know Ngure very well. I know he had been employed in Imenti. He came back after the land had been demarcated. The land belonged to their clan. When the land was being demarcated who was registered for every family? There was one member of the family who represented the others. I know Ngure's father as M' Ituiri Baituri was alone when the clan was demarcating the land. He is the father of the Gaciuru. Gaciuru Baituri and his son Gaciuru each had different lands. The father Baituri could have got family land. Gaciuru got his separate land. The clan had given the land. The clan gave the land to Gaciuru. Is there any land given by the clan to Gaciuru's father? Baituri? Yes. Who took the land given to M' Ituiri Baituri? It was left to the last born. I do not remember the number of the parcel of land. The land is at Kiriana. Paragraph 7 of the affidavit. Gaciuru Gaciuru gathered more parcels in 1967. It is correct. When was the registration process to the area? The land was divided during Moi's era. It was given out. After division started in 1957. I was an adult. I was not in the committee. I was measuring land but not a member of the committee. I was not involved in the process of adjudication. I only got my land. In 1967 when Gaciuru Gaciuru took two parcels of land. I had land there. What is



your land number? Nos. 47, 42 they are the ones I had measured in that area. Any evidence before the court to show you were the owner of the land? I have not brought the documents of my membership. Paragraph 7 (ii) – Arbitration board cases like no claim on the two parcels of land by Gaciuru and Ngure? I was not a member of the board. We were measuring the land. I was measuring my own land. I did not know what went on in the parcels of land. Paragraph 7(iii) – Ngure’s father had measured 3 parcels of land and the transferred them to the three at Kiriana the other 2 parcels I do not know where they were. The parcel at Kiriana number? I do not know. Do you know the numbers of the other parcels of land? I do not know the numbers of the other two parcels. I do not know where the other 2 parcels of land are. Baituiti got the 3 parcels of land in which year? It was in 1957. Were you there? We were first measuring because we were in the same clan. Were you there when Baituri? I do not know - the petitioner’s father was very old. I was a neighbour. How come you did not know of the other 2 parcels? The land is at Kianda. Luanda is not Antuamburi. We plant maize, Miraa. Kiriana and Luada Shambas? Any difference? There is no difference. Is it semi – arid? No, it rains regularly. The 2 shambas given to Ngure there is 1 acre. I do not know the number. The lands in Luanda are large. I do not know the size of the land. Do you know the year the transfer to Ngure was done? It was in 1957. I was not there. We are in the same area. Do have a common boundary with Gaciuru or Ngure? We do not have a common boundary on the land. Ngure came back from Imenti area? When Ngure came back he found land had been adjudicated. Where did he construct his house? He built on the same land on the land at Kiriana belonging to his Gaciuru’s land. Gaciuru’s and Ngure were friends. Why did Ngure construct in his land? He got 1 acre, which is Gaciuru’s land. I do not know why he constructed a Gaciuru’s land. Paragraph 11- It was given to Ngure by Gaciuru. It was because of his good will that he gave to Ngure. I never attended any meeting when Gaciuru gave land to Ngure. Were you a witness in any meeting when Gaciuru gave land to Ngure? No. Ngure house: I know his compound. It has about several houses. Ngure’s houses a number of houses. I think there are 4 houses together with the brother. Ngure’s one son has built on his own land. I do not know the number of the land. Is it true Ngure’s son have built about 10 houses? I do not know. Ngure has one 1 acre: I never gave with survey to measure. I know Baituri. Did you know the children? The first was son. I do not know the name. Two of them are deceased. I do not know their names. Those living are Jane, Pauline Ngee, (OW2) she is a daughter. At the place where Ngure house are there other developments? Miraa. Yes, he has Miraa Cypress trees, yams and other trees. The property being used by Miriam. Even Ngure has the property within the house. Gaciuru Gaciuru’s shamba 1XX7 at Thima Antuambui paragraph 7 of Affidavit. Gaciuru had 2 parcels of land. I have been a friend to the family of Gaciuru and Ngure. You were a supporter to one of the sons of Miriam Gaciuru? It is not true.”

15. In re-examination, he stated that, “Two parcels of land. Gaciuru and M’ Ituiru Bairui. The lands by Gaciuru were given himself. The clan land are given to M’Ituiri Baituri. (Paragraph 7(iii) of affidavit). The M’ Ituiri are the ones that were given to Ngure. Ngure got a shamba even if he was at Imenti. Where Ngure lives on 1 acre, the land belongs to Gaciuru. (Who gave Ngure the 1 acre) it was Gaciuru who gave Ngure the 1 acre. Gaciuru is older than Ngure. What do Meru Customary Law call the older brother to the younger brother? The younger brother calls the elder “father”. Gaciuru gave Ngure land as his “son” since Gaciuru died nobody has denied Ngure has one acre. In which does not belong to Ngure. Only 1 acre which he was given. When Ngure came from Imenti did he sue his brother at Kauti antuabui Board? No. After Ngure came from Imenti and got 5 acre has he never sought to the family of Gaciuru? No. The property and trees on the land belongs to Miriam not Ngure. It is Miriam who is using the property- Miraa etc. It is Miriam who has the Miraa and other property. Title deed and parcels of land 47 and 42? I did not have any case before the court on the two parcels of land. I would have brought the title if I have been asked. The other lands of Ngure? It is Ngure who should explain where the lands are. Luciata Antuambui. The lands are big lands. Reasons for giving 1 acre to Ngure? What is their relationship? Very close and they used to live well together. Gaciuru even got dowry for



marriage and he is the one who got him a wife by...the registration party from the groom. (Why did Ngure not go for the 1 acre to his own land? Paragraph 16 of affidavit?) I have stated that he had given the land to his son Patrick Ngure. The land for M'Ituiri Baituri was given to the youngest son. The last-born son is Ngure. 10 houses at Ngure? No, there are 10 houses at Ngure's home. I have testified because it is the truth and we are from the same village. I do not have any enmity with Mr. Ngure. When Gaciuru gave dowry from Ngure was their father Baituru M'Ituri was alive? No, he was dead. In the death of their father it is Gaciuru eldest brother to Ngure who acted as the father."

16. PW3 Joseph Nturu M'Abwana adopted his affidavit sworn on 22/10/2022 as his evidence in chief. He testified that, "I live Antuambiga village. I am a peasant farmer. I know Julius Ngure and Miriam Kngundu. I do not have any dispute with either of them."
17. On cross examination, he stated that, "I am 80 years old. Between me and the father of the deceased M'Ituri. I am the younger. M'Ituiri was not older than my father. My father was older than M'Ituiri. They were of different age-groups but the two age-groups followed each other. Between me and Gaciuru the deceased here I am younger, Gaciuru was older than me by many years. In 1960 I was 20 years. I was born in 1940. Julius Ngure is known to me. I am older than him. We are in the same age – group. (Paragraph 4 of affidavit gathering of land in 1960. How did you know? We were gathering the land as were sharing boundary. My land is 1724. I do not recall so well. Do you come from the same village? From my home to the home of Gaciuru is not very far 1-5 like from the court to Gakoromone Market. Do you own any land yourself? In the area between your home and Gaciuri's home. I own plot no 445. It is near Gaciuru's land. I was not a member of the committee in adjudication. I was not instructed. Apart from being from the same clan we have no relationship with Gaciuru. (How did you know his affairs while you were not close and you were only 20 years?) We were in the same area. Gaciuri's Land was gathered on a date I can't recall. Gaciuru's father land was gathered earlier. Plot 2XX0 belongs to Gaciuru? Yes, Gaciuru had 3 wives. He had constructed houses for them on the parcel of land. Gaciuru and other children were born on this land. (Who was the first to live on the parcel of land between Gaciuru and his father? They had not originally been on the land. They moved to the land. I do not know what year they moved on to the land. They came from Luanda areas. He constructed a home for each wife on the land. At this time Gaciuru had married. He married in 1958. I was 18 years old. I did not participate in the wedding of Gaciuru. I was in school. Before the adjudication the lands belonged to the clan. It is true that during adjudication the land is given to father to hold for each family? Yes, it is true. M'Ituiri at paragraph 7(iii) had taken 3 other parcels of land in his name? It was at Luanda. I was there when he gathered the lands. I do not recall the year. I know the three lands. I do not know the acreage of each parcel of land. We were gathering the land while I gathered my land. Plot 831 by Gaciuru. The one I gathered near the land. I do not have any land near 831. I do not know the size of the land. How did you know that M'Ituiri gathered 3 parcels of land? We were measuring our land and we saw him gathering the land. Do you have any land at Luanda? I do not have any land at Luanda. Paragraph 7(iii) of affidavit that M'Ituiri gave land to Ngure when? It was in 1992 I was not there. The deceased's father died in 1974. How could he give the land in 1992. It was Ngure who followed up on the buyer. I do not know when the deceased's father transferred. I know Baituri died at his home. Julius Ngure was live but he is a child. He did not understand. (Paragraph 11 Ngure had gone to Imenti for employment? He was a child? He was a small child. He had left school to go to Imenti. (When Ngure came back, his brother allowed to stay on plot 2XX0?) Yes, There was a shamba which belonged to Ngure while was adjacent to 2XX0. (Why did his brother allow him to construct on Plot 2XX0). Because there was a sloppy hilly place on his land. Is it true only one living on 2XX0? Yes, the son lives there on the parcel of land next to 2XX0. Ngure gave his son the wives shamba next to 2XX0. I do not know the number of the plot."



18. In re-examination, he stated that, “Exhibits: Land registries shows the land was given to Ngure. I have not been shown any document indicating they did not belong to Ngure. The land we gathered with Gaciuru is at Antuambuga. The land belongs to Gaciuru with M’ Ituiri Baituri his father. The land held by Gaciuru was given by the clan to M’Gaciuru M’Gaicuru. He is the deceased in this case. The land in dispute belongs to M’Gaciuru Gaciuru. Why was Ngure given 1 acre if he had a shamba nearby? He was obedient to M’Gaciuru that is why Ngure was given this 1 acre by M’Gaciuru. No one is taking away this 1 acre. Ngure and his family lives on the 1 acre he was given at Gaciuru’s home which is not claimed by any person. (Ngure’s land is next to the parcel of land he was given why not construct there? They have constructed. It is only they have not constructed on all of it. Paragraph 17 Ngure gave his land to the 1 acre. He had planted Miraa. He had constructed on the 1 acre given to Ngure by Gaciuru? I was 20 years at demarcation. I was not aware that M’Ithui had ever claimed the land from Gaciuru. Do you know that the land process passes several stages? Did you know of any clan? Yes, I know the procedure. There are no cases by Ngure claiming the land for Gaciuru. Luanda plots of lands? I know where they are. Everyone had their land. I did not get to know what others got.”
19. AW1 Julius Ngore testified that, “I come from Laare. The deceased was my brother. The petitioner is a widow to the deceased. ITHIMA/ANTUAMBUI/2XX0 was registered in the name of the deceased. I claim the land from the deceased estate because at the time of adjudication I was away in Imenti. My father had 3 parcels of land, one at Nguyuyu which was given to Gichunge. The other was at Miuine which was given to the deceased. The third was at Nkiriana and was No. 2XX0. It was given to me by my father. I swore an Affidavit in support of an application for revocation of grant. I also filed another Affidavit filed on court on 9.11.2018. I wish to rely on the two Affidavits as my evidence in chief. I am aware the petitioner says I was given 3 parcels of land by my father. She also says that I was not given the Nkiriana land but the truth is that I was given land there. My father did not have any other land as alleged by the petitioner. He was buried in my farm because he had not moved into land and he was my brother. I know that the deceased also buried a married daughter on the land because the lady had been chased away from the husband’s home. I was not there when the land was getting adjudicated and registered.”
20. On cross examination, he stated that, “I cannot remember between which years I was in Imenti. I cannot also remember when I came back from Imenti. I do not have a witness from Imenti to confirm I was there. I do not remember when the land was adjudicated. I do have an elder from my clan to say the deceased held the land on my behalf but he has filed an affidavit. He is called M’Akaire M’Igwamba. I was given the land I claim before I got married but I cannot remember the year. I know my father told the deceased to hold land on my behalf because I was there. I cannot however the date month and year. I was not given the land directly because I was a young child aged about 15 years. I am aged 72 and was born about 1950. I do not know when the land in my area was adjudicated. I have papers to show the land belonged to my father before he gave it to the deceased. The deceased built on the same land lived there, died and was buried there. Even his daughter was buried there. However all of us were brought up there. I gave permission for the deceased to be buried there and I have M’Ikaire M’Igwaba as my witness. Even Gichunge M’Ituiri is my witness but I know he died and has not recorded a statement. I was not aware that the land had been registered in the name of the deceased since adjudication. Before his death I did ask the deceased to surrender the land but he told me to wait for children to finish school. I don’t remember when I demanded. I know I sued in Maua but lost the claim over the land but I did not the lands. I did not appeal against the decision. The case was Maua CMCC 226/2013 Julius Ngore M’Imweti Vs Miriam Kangondu. I can see paragraph 6 (ii) of the petitioners Affidavit filed on 20.4.2017 where he says three parcels of land were registered in my name. I do not remember when my father allowed my brothers to hold the family land. When I came back from Imenti my father was alive and he told the deceased to give me the land. I have photos at home showing I have developed the



land. I refer to an agreement at paragraph 17 of the Affidavit in support which mention land parcel No. 2XX0. My signature was forged and I reported to the chief but not the police. The deceased did not help me marry my wife. I and the administrator use the land 2XX0. There are 7 houses on the land and seven homestead. My home, my three sons and other houses for my grandchildren. The family of the deceased live on the land the deceased bought. They do not live on 2XX0. Those who live on the land include Miriam and John Chabari. All have four houses not homesteads. The portion of the land I use has miraa just like the portion the administrator uses. The portion they use is about 2 acres. It is smaller than the portion I use. The homestead of the parents go to the eldest son. I know the elders who were in the panel of adjudication. Joshua Kithela and M’Tombe Ncubiri are neighbours but not our clan members. The two are members of Antuambui clan. During adjudication in 1976 I had come back home but did not raise any objection.”

21. AW2 Pauline Nchege Gatwiri adopted her statement dated 4/9/2018 as her evidence in chief. She testified that, “I am Pauline Nchege. I come from Kiarama. Antuamburi location. I am 70 years. I know Julius Ngure. He is my brother. I know Miriam Kang’onde. She is the wife of my brother Gaciuru. I know there was a land dispute before the court. I recall recording my statement before the advocate. I know that our father had 3 parcels of land. He called village elders and told them that he wanted to give land to his children. The land at Muine was given to Gaciuru. Gaciuru husband of Miriam, the land on Nguyuyu was given to Gichunge and the land at Nguriana was given to Ngure. At present the land at Ngiriana is occupied by Ngure and Miriam because she died not more. Ngure did not get any other land by our father. Gaciuru. Gaciuru is older than me. There was an older sister who is deceased. Among the male children it was Gaciuru who was eldest followed by Gichunge and Ngure was last. Ngure was not present when land was divided. He was at Imenti. It was our father with M’ Gaciuru who subdivided the land. Our father told Gaciuru that the land at Ngiriana belonged to Ngure. The land was registered in Ngure’s name. Our father told Gaciuru that he should move from Nuriana Ngure’s land and go to his shamba at Miuline. Gaciuru did not move. The land at Ngiriana should go to Ngure.”
22. On cross examination, she stated that, “I have my identity card. Identity card no. Pauline Ncee. The father of Gaciuru was called Ntuitui. I do not recall the other names. My identity card does not have the name Ntuitui. How is it that you do not recall the other name of your father? If you are the daughter of Ntuitui. (You are daughter to Ngure). The two are my brother. My letter from the chief to show that Gaciuru and Ngure were your brothers? No. I do not have my letter from the chief. When did you allege father die? The person who lived with him and the one who would know. I do not know when Ntuitui died. What date was the burial. I do not know the date that he was buried. Where did Ntuitui die? I know he died at Nguriana. He died at home not in hospital. Were you there? It was not true I was at my home. The land belonged to Ntuitui. Do you have any documents to show the land ever belonged to Ntuituri? I left the document at home. (First registration was registered in the name of Gachiure husband of the petitioner). I know that the land was registered in the name of Gaciuru. Gaciuru do you know that Gaciuru was registered on first registration? I know that our father used to go with Gaciuru. Gaciuru I know that the land was registered in the name of Gaciuru. He was told one belonged to Ngure.

Nkiriana: Is that where Gaciuru built his home? I agree that is where Gaciuru has built his home. Miriam wife of Gaciuru lives on Nkuirana land she has Miraa and she farms on the land. Gaciuru husband is also buried on the Nkiriana land. When he was buried Ngure was there. Did we object to the build of the church? He did not object they were brothers and they were friends and had no dispute. I do not know which year it was when Ngure agreed grandson should be buried n that land. Ngure has not said in this statement that he is the one who said Gaciuru should be buried there) I do not know what Ngure has recorded. I do not know when dereaction started. (At paragraph 5 of statement) when did Ngure go to



employment at Imenti? I do not recall. (Where is Imenti Central was it before employment?) I do not know who had employed him. I do not know in what village of Central Imenti Ngure had been employed. I heard he had been employed at Kithoka. Kithoka is in North Imenti not Central Imenti. I do not know. Do you know that Ngure was not bought or been registered owner of my land? Ngure has never been registered owner of my land or bought any land property. (Further affidavit on 18th April, 2017 by Miriam Kang'onde adopted as evidence). (Paragraph 6 (iii) – Green card parcel, 831, 2677 and 3544 are his parcels given to Ngure by his father.) I do not know that he got three parcels of land. I only know of one. Mr. Ngure subject of his proceedings and James Ngure N'Imwenti. (Paragraph 5 of witness statement). When did the father sub-divide his lands? I do not know which year it was. I have nothing to show that Ntuitui had been registered owner of the land and he sub-divided it. I left the documents at home. Paragraph 6 of witness statement when did father leave land for Gaciuru land for Ngure? I do not know which year it was because I had been married. (Witness statement was written and you were only required to sign?). The statement was written for me and I told what I know. I went to the office of the advocate the office and I then I do not know where the office is. Do you know the name of the advocate who wrote the statement? I do not know the name of the advocate. (Statement of witness that land was registered in the name of Gaciuru hold for Ngure). I do not have any documents to show that Gaciuru was registered to hold for Ngure. Ngure's shamba what is the acreage? It is 4 acres. I do not know the parcel number. Ngure is about 60 years. It is true. For the 60 years the land had been used by Gaciuru and his wife Miriam. It is used by Gaciuru and Ngure. (It is Gaciuru who uses the larger part? No, it is Ngure who uses the larger part. (Ngure was given 1 acre by Gaciuru) I do not accept that. Gaciuru planted Miraa and farming bananas. Yes, he planted and until today, the Miraa and bananas are still on the land. (It is not true that he gave the land to Ngure) Gaciuru has not given the land to Ngure. (Parcel 104 was registered in name of Gaciuru himself). It is not true that Gichuri was registered incorrectly as owner of the plot 104). I do not live any counts to this. (Paragraph 10 of witness statements) I was not there when Ngure failed from the crops. He paid Gichunge his brother. It is Gichunge who told us. It is Gichunge who told us that Ngure had paid for hi crops. Gichunge is deceased. I do not have any documents. I left them at home. (When did Gichunge tell you this?). I do not know the date month or year. I do not know any person who is alive today who was present when the payment was made. (Paragraph 11 of the statement) were you there when the subdivision was done?) I was there. I do not recall the year as I was not educated. (In the statement you did and state that your father called village elders) it is written in the statement. I know the names of the will as follows: -

1. Kilimilo – deceased
2. Mati – deceased
3. Ntonganyi – deceased
4. Kamenyia – deceased
5. M' Itikiani – deceased

Do you have minutes of the meeting from the sub-division of the land? I do not have the minutes they are at home. (What was the secrecy of the meeting?) It is true that land matter were discussed by male elders only and distance of female elders, in evidence with Meru Customary Traditions. It is true the elders I have given are all nearly calling by they are deceased. I was not at the meeting but an elder came and informed me. What male elders



informed you? No elder told me what happened at the meeting. It was Kilimo who told me Kilimo is deceased. I cannot tell the date month or year when he told me. I do not recall the date. (Were you there when Gachuri's father told Gaciuru about the sub-division of the land? Yes, I was there. Date, month and year? I do not recall the dates are written and I have documents at home. I had not been married at the time. I got married in 1977. (The subdivisions of the land was in 1992 according to Green card) Yes, subdivisions by Gaciuru father was in 1992. This is the time when he gave his children the parcel of land. I was married in 1977.”

23. In re-examination, she stated that, “Do you know whether Gaciuri's father was alive in 1992 when the titles were issued. Do you know whether he gave him the shambas in 1992 or earlier? He gave the land in 1992. When I said I was present during sub-division. It was during the direction. (Gaciuri's father gave land after the deceased? I did not go to school. I do not know how to read and write. I did not record the events. Name when did you take your identity card? I took the identity card when I had been married there and no reason to record my father's name. Are you a sister to Gaciuru and Ngure? Yes. Were you even taken by Ngure to his advocate office? Yes, He took him to record a statement. I am the one who told him advocate that matters were recorded. I placed my fingerprint. No one has registered to the police stating that it is not my signature. (Affidavit of Miriam of 18th April, 2017 and filed on 20th April, 20117 paragraph 5). Applicant disappeared and went to be employed at Imenti areas) Ngure was employed at Imenti. Does Ngure have any papers on the land on dispute? Yes, he has Miraa, yams sugarcane, bananas, avocados. Even his home is also on the land. It is about 5 houses. Ngures children have a house there. Gaciuru and Ngure have reports on the disputed land. The 3 other parcels of land 831, 2677 and 3544. Is there any evidence that they came from the father? No. (Meru Customary Laws about subdivision of land not female children absent). Is there any rule against calling female children? If a child female is near she may be called to attend. Where the female children are married they are not called. When our father was subdividing the land I was married. Did you attend the meeting? I was present. He said that Nkiriana land should go to Ngure. Why did Gaciuru get buried on the land? They were friends. Has Gaciuru constructed on any other land? Yes, it was Ngure who agreed that Gaciuru be buried on the land. (Why did Gachiru give him one acre to Ngure?) There was no land that Ngure was given by Gaciuru.”

Submissions.

24. The applicant urged that he tendered sufficient evidence to discharge the burden of proof of existence of a Customary trust over the suit property, and cited the Supreme Court case of *Kiebia v M'lintari & another (Civil Case 10 of 2015)* [2018] KESC 22 (KLR) (5 October 2018) (Judgment). He urged that he had proved a legitimate claim over the suit property under the provisions of Section 76 of the *Law of Succession Act*. He urged that the issue of the existence of Maua CMCC No. 226 of 2013 was determined by this court in its ruling of 26/4/2017.
25. The Petitioner urged that the onus of proving the customary trust lied on the applicant, and cited the Court of Appeal cases of *Charles K. Kandie v Mary Kimoi Sang* (2017) eKLR and *Peter Ndungu Njenga v Sophia Watiri Ndungu* (2000) eKLR. She accused the applicant of material non-disclosure when he concealed the fact that he had filed Maua CMCC No. 226/13 claiming 4 acres of the suit property. In her view, the applicant was guilty of laches in seeking the revocation of a grant which had been confirmed seven years ago on 2/7/2007. She urged that the agreement on miraa related to the applicant's adjacent land Parcel No. 3544, and prayed for the dismissal of the application with costs.



Analysis and Determination.

26. The issue for determination is whether the grant should be revoked.
27. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:-
- “76. 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. (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.”
28. The parties herein are in agreement that L.R No. ITHIMA/ANTUAMBUI/2XX0 and 1XX7 belonged to M’Ituri Baituri and the former was wholly given to the deceased herein. The bone of contention is whether the applicant was entitled to the suit property in its entirety or an acre thereof.
29. The Petitioner PW1 admitted in cross examination that, “My father in law had parcels of land. They were 3 parcels being at Nkiriana Miuine and Nguyuyu. My father in law had three sons, my husband, Gichunge and Ngore. I know how the father to my husband divided the parcels. Gichunge got the Nguyuyu. The land at Miuine was given to my husband. The land at Nkiriana was also given to my husband. Julius Ngore got one acre at Nkiriana and within Ithima/Antuambui/2XX0. It is not true the objector was to get Antuambui in whole. According to Meru traditions the oldest son gets the homestead of parents. The children of Ngore (3) have built homes on the said land. I was there when the land was being shared. There was no meeting held by my father in law before he died.” In re-examination, she stated that, “My husband allowed Ngore to use 1 acre of 2XX0. He gave him. The rest of the shamba 2XX0 is used by me, my son John and his family. We use 3 acres and he uses 1 acre.”
30. The applicant herein testified as AW1 that, “ITHIMA/ANTUAMBUI/2XX0 was registered in the name of the deceased. I claim the land from the deceased estate because at the time of adjudication I was away in Imenti. My father had 3 parcels of land, one at Nguyuyu which was given to Gichunge. The



other was at Miuine which was given to the deceased. The third was at Nkiriana and was No. 2XX0. It was given to me by my father.” On cross examination, he stated that, “I and the administrator use the land 2XX0. There are 7 houses on the land and seven homesteads. My home, my three sons and other houses for my grandchildren. The family of the deceased live on the land the deceased bought. They do not live on 2XX0. Those who live on the land include Miriam and John Chabari. All have four houses not homesteads. The portion of the land I use has miraa just like the portion the administrator uses. The portion they use is about 2 acres. It is smaller than the portion I use. The homestead of the parents go to the eldest son.”

31. AW2 testified that, “I know Julius Ngure. He is my brother. I know Miriam Kang’onde. She is the wife of my brother Gaciuru. I know that our father had 3 parcels of land. The land at Muine was given to Gaciuru. Gaciuru husband of Miriam, the land on Nguyuyu was given to Gichunge and the land at Ngiriana was given to Ngure. At present the land at Ngiriana is occupied by Ngure and Miriam... Our father told Gaciuru that the land at Ngiriana belonged to Ngure. Our father told Gaciuru that he should move from Nuriana Ngure’s land and go to his shamba at Miuine. Gaciuru did not move. The land at Ngiriana should go to Ngure.” On cross examination, she stated that, “Nkiriana: Is that where Gaciuru built his home? I agree that is where Gaciuru has built his home. Miriam wife of Gaciuru lives on Nkuirana land she has Miraa and she farms on the land. Gaciuru husband is also buried on the Nkiriana land. When he was buried Ngure was there.”
32. Joshua Kithela, alleged former land committee member who swore an affidavit on 18/4/2017 in support of the petitioner’s case, was not called as a witness and could not, therefore, be cross-examined on the contents of the Affidavit which, consequently, cannot be relied on.

Verdict.

33. On a balance of probabilities, there is need for the petitioner’s assertion that the deceased had only given 1 acre of land to the applicant on humanitarian considerations for the applicant as a brother and not on consideration of any trust for him, to produce cogent evidence as proof.
34. There is no reasonable explanation as to why the Applicant’s and Deceased’s father would have given 2 of his three parcels of land to the deceased only and fail to make provision for his third son, the applicant herein, if what is testified by the Petitioner (PW1) on cross-examination is true that “My father in law had parcels of land. They were 3 parcels being at Nkiriana, Miuine and Nguyuyu. My father in law had three sons, my husband, Gichunge and Ngore. I know how the father to my husband divided the parcels. Gichunge got the Nguyuyu. The land at Miuine was given to my husband. The land at Nkiriana was also given to my husband. Julius Ngore got one acre at Nkiriana - within Ithima/Antuambui/2XX0. It is not true the objector was to get Antuambui in whole.”
35. PW2 who described himself as a neighbour and supported the case of the petitioner confirmed on cross-examination that he was too young relative to the deceased’s father and though he witnessed the demarcation exercise in 1957, he was not in the Demarcation/adjudication Committee and yet asserted that the Deceased herein had got the land directly from the Clan and not from the father contrary to the Petitioner’s case that the deceased had got his land from the father, and finally appeared to support the applicant’s case that the Nkariana land, suit property herein, was given to the last born the applicant, as follows:

“I know the father of Julius Ngure and husband to Miriam Kang’onde. I do not know when he died. He was not my age group. He was older than me by far. I could not according to Meru Customs stay close by the parties’ father. I was a young man. I was not there at the place he died. Before he died I used to meet him. I do not recall any date when we met. Any



meeting for distribution of Ngeru's father distributing his property? No, I was never there at any meeting. I know Ngure very well. I know he had been employed in Imenti. He came back after the land had been demarcated. The land belonged to their clan. When the land was being demarcated who was registered for every family? There was one member of the family who represented the others. I know Ngure's father as M' Ituiri Baituri was alone when the clan was demarcating the land. He is the father of the Gaciuru. Gaciuru Baituri and his son Gaciuru each had different lands. The father Baitui could have got family land. Gaciuru got his separate land. The clan had given the land. The clan gave the land to Gaciuru. Is there any land given by the clan to Gaciuru's father? Baituri? Yes, Who took the land given to M' Ituiri Baituri? It was left to the last born. I do not remember the number of the parcel of land. The land is at Kiriana. Paragraph 7 of the affidavit. Gaciuru Gaciuru gathered more parcels in 1967. It is current. When was the registration process to the area? The land was divided during Moi's era. It was given out. After division started in 1957, I was an adult. I was not in the committee. I was measuring land but not a member of the committee. I was not involved in the process of adjudication."

36. The Court was not able to take any benefit from the apparently confused testimony of the witness PW2, who despite claiming to be a neighbour to the family was unable to respond to the many questions on cross-examination relating to the parcels of land he claimed were given to the Applicant. He said on cross-examination the suit parcel of land "was left to the last born. I do not remember the number of the parcel of land. The land is at Kiriana" and on re-examination confirmed Ngure was the last born entitled as follows: "The land for M'Ituiri Baituri was given to the youngest son. The last-born son is Ngure."
 37. The fact that the applicant's family is settled on the suit land, and the deceased has his other parcel of land given by their father, and the fact that there has not been adduced any cogent evidence to show that the applicant as one of the sons of Baituri received any land from him, supports the existence of trust for the applicant who, unlike his two brothers, did not get any allocation of land as he was away during the demarcation exercise, as stated by AW2 the sister of the applicant and the deceased who was categorical that "I know that our father had 3 parcels of land. The land at Muine was given to Gaciuru. Gaciuru husband of Miriam, the land on Nguyuyu was given to Gichunge and the land at Nguriana was given to Ngure. At present the land at Ngiriana is occupied by Ngure and Miriam."
 38. The Court is unable to accept as more likely than not the testimony offered by PW3 in support of the petitioner's case that the applicant had another parcel of land because he could not give a reasonable explanation why the deceased would have given 1 acre of land on his parcel the suit property out of goodness of his heart allegedly for the applicant's obedience, if the applicant already had another parcel of land adjacent to the suit land, saying on cross-examination that "The land in dispute belongs to M'Gaciuri Gaciuri. Why was Ngure given 1 acre if he had a shamba nearby? He was obedient to M'Gaciuru that is why Ngure was given this 1 acre by M'Gaciuru."
- The question lingers why the deceased while under no obligation legal or moral would give a portion of his inheritance parcel of land to his brother while the beneficiary already has his own lands adjacent?
39. From the evidence on record, the Court finds that the suit property was family land held by the deceased herein in trust for the applicant.
 40. However, it appears from the evidence, as admitted by the Deceased's sister AW2 on cross-examination, that the suit property is currently occupied by the petitioner, the applicant and the petitioner's son John Chabari. Therefore, to order the eviction of the petitioner and her son John Chabari from the



suit property would, at the altar of zealous pursuit of justice for the applicant, occasion grave injustice to them having been in long occupation of the land, a result from which this court must refrain.

41. The Court notes, as accepted by the Applicant, that the Petitioner and her son John Chabari occupy about two acres and the Applicant the rest of the land. As the Petitioner has another parcel at Miune, the suit property should go to the Applicant, who is entitled to it on the basis of the trust, and to the Petitioner's son John Chabari on taking into account his long occupation thereof, which the Court does not in the circumstances of the case deem fit to disrupt.
42. Rule 73 of the Probate and Administration Rules provides that: "Nothing in this rule shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court."
43. Section 47 of the [Law of Succession Act](#) spells out the jurisdiction of the High Court in the administration and distribution of estates in these terms:
 - “47. The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
44. This court is satisfied that the applicant has sufficiently proved that the grant issued to the Petitioner herein and confirmed on 2/7/2007 is ripe for revocation, as it was obtained by concealment of the material fact that the suit property was held by the deceased herein in trust for the applicant. The Court does not find any proceedings filed at Maua Chief Magistrate's Court in relation to the suit property to affect the determination of the Summons for revocation of Confirmed Grant in this Cause.
45. The revocation of Confirmed Grant, however, should only affect the relevant parcel of land L.R. No. ITHIMA/ANTUAMBUI/2XX0 in which the applicant's interest based on trust has been established.

Orders.

46. Accordingly, for the reasons set out above and in exercise of its inherent powers under section 47 of the [Law of Succession Act](#) and Rules 73 of the Probate and Administration Rules, this court makes the following orders:
 1. The Grant issued to the petitioner herein and confirmed on 2/7/2007 is hereby revoked to the extent herein below directed.
 2. The order for revocation of Grant herein shall affect only the estate asset suit property herein known as L.R. No. ITHIMA/ANTUAMBUI/2XX0.
 3. The estate asset suit property LR No. ITHIMA/ANTUAMBUI/2XX0 shall be distributed as follows:
 - a. John Chabari representing the Petitioner's family - 2 Acres
 - b. Julius Ngore – Balance of the parcel of land.
47. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 29TH DAY OF MAY, 2025.

EDWARD M. MURIITHI



JUDGE

APPEARANCES:

M/S Haron Gitonga & Co. Advocates for the Applicant

M/S Carlpeters Mbaabu & Co. Advocates for the Petitioner

