



REPUBLIC OF KENYA



**In re Estate of the Late M'Etirikia Nthaka (Deceased) (Succession Cause 305 of 2004) [2024] KEHC 3778 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3778 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 305 OF 2004  
EM MURIITHI, J  
MARCH 20, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE M'ETIRIKIA NTHAKA  
(DECEASED)**

**BETWEEN**

**CESARY KARARU M'ETIRIKIA ..... 1<sup>ST</sup> APPLICANT  
ISAAC MURIUNGI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**STANLEY GITONGA M'ETIRIKIA ..... 1<sup>ST</sup> RESPONDENT  
SIBERIA MAKENA M'IMARIA ..... 2<sup>ND</sup> RESPONDENT  
GEORGE M'IGWETA M'MUNYI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By Summons under certificate of urgency dated 11<sup>th</sup> October 2023 pursuant to Sections 47 and 76 of the [Law of Succession Act](#), Rules 44, 59 and 73 of the Probate and Administration Rules, the applicants seek that:
  1. Spent
  2. Pending the hearing and determination of this application, an order do issue restraining the respondents, their representatives, servants, employees, agents and anyone else acting or claiming for, on behalf of or through them, from evicting, selling, leasing, charging and/ or whatsoever interfering with the 1<sup>st</sup> and 2<sup>nd</sup> Applicants' occupation, cultivation, user and enjoyment of their shares in Lr/no. Njia/kiegoi/254.
  3. The honourable court be and is hereby pleased to issue an order to the land registrar Meru North District Land Registry to dispense with the production/surrender of the original title



deeds in respect of Njia/kiegoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 which are unlawful subdivision of Njia/kiegoi/254 being the estate of the deceased to pave way for the implementation of grant.

4. Any inhibition/caution/restriction subsisting over Njia/kiegoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 which are unlawful subdivision of Njia/kiegoi/254 being the estate of the deceased is hereby vacated/lifted to pave way for the implementation of grant.
  5. The grant of representation issued to Stanley Gitonga M'etirikia be revoked and a fresh grant do issue to the applicants herein.
  6. Title No.s Njia/kiegoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 which are resultant subdivisions of Njia/kiegoi/254 forming the estate of the deceased herein, be cancelled to revert back to the deceased's name for proper distribution among the lawful beneficiaries.
  7. The OCS Kangeta Police Station do supervise the implementation of the orders.
  8. Costs of this application be provided for.
2. In his affidavit in support of the application, the 1<sup>st</sup> applicant avers that the 1<sup>st</sup> respondent has refused to implement the grant in accordance with the ruling of 30/6/2021. He accuses the 1<sup>st</sup> respondent of colluding with the other respondents and other parties to frustrate the applicants from utilizing their share of the estate. Prior to the ruling of 30/6/2021, the 1<sup>st</sup> respondent had subdivided LR No. Njia/kiegoi/254 (hereinafter called the estate property) into Njia/kiegoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671, and an order of the court is needed for the cancellation of those subdivisions so that the estate property can revert to the name of the deceased for redistribution. He and the 2<sup>nd</sup> applicant are elderly and sickly and they wish to have the grant implemented soonest so that they can put this matter to rest. An order of injunction is necessary to restrain the respondents or their agents from interfering with their occupation and possession of their share of the estate. He avers that unless the orders sought herein are granted, they stand to suffer irreparably.
  3. The 1<sup>st</sup> respondent opposed the application vide his replying affidavit sworn on 10/11/2023. In his view, the application is full of lies, deliberate misrepresentation and concoction of facts to hoodwink the court to grant absolutely undeserved orders. He avers that the applicants are still occupying and utilizing the part of the estate they were using before the estate was redistributed, and he urges the court to visit the locus in quo to establish the truth. He accuses the applicants of frustrating the implementation of the grant by failing to contribute the transmission expenses. He avers that after the delivery of the ruling of 30/6/2021, the file went missing only to re-surface around March 2023, and at the time the estate was being redistributed, the estate property had already been subdivided into Njia/kiegoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 with the consent of all beneficiaries. When he presented the rectified certificate of confirmation of grant to the Land Registrar, he was advised to obtain an order cancelling the resultant subdivisions of the estate property, and he filed an application dated 26/7/2023 to that effect, which is still pending. He has done everything possible to implement the grant, but owing to the challenges he encountered, he prays for more time.
  4. The 2<sup>nd</sup> respondent opposed the application vide her replying affidavit sworn on 10/11/2023. She urges that she has been in exclusive occupation of Njia/kiegoi/1665, which she has extensively developed with several permanent houses, 1500 tea bushes, 100 banana stems, 1000 mikima trees, 100 cinder trees, nappier grass and maize and beans.



## Submissions

5. The applicants urge that the administrator has clearly violated his mandate to fairly distribute the estate in a timely manner and accuse him of colluding with other parties to deny them their rightful share. They urge that the actions of the administrator offend section 76 (d) (ii) of the *Law of Succession Act*, and cite *Re Estate of Elijah Mbono Ntheketha (Deceased)* (2017) eKLR, *Re Estate of William Nzioka Mutisya (Deceased)* (2018) eKLR, *Re Estate of Njue Kamunde (Deceased)* (2018) eKLR and *Re Estate of Wilson Ndumbi Kathesye (Deceased)* (2016) eKLR.
6. The respondents urge that the administrator has been willing to proceed with the task of administration of the estate and he is ready to finalize the exercise once the subdivisions of the estate property are cancelled. They urge that the application does not meet the requirement of section 76 of the *Law of Succession Act*, and cite *Augustine Moi Kirigia v Catherine Muthoni Isimali Kirimi* (2017) eKLR. They urge that the application has been brought in bad faith and it ought to be dismissed with costs, and the application dated 26/7/2023 allowed.

## Analysis and determination

7. The issue for determination is whether the prayers sought in the application ought to be granted.
8. It is common ground that the resultant subdivisions of the estate property to wit Njia/kiogoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 ought to be cancelled so that the estate property reverts to the name of the deceased. The parties equally agree that the said subdivisions were undertaken way before the ruling of 30/6/2021 was passed.
9. The only prudent thing to do now is to order the cancellation of the resultant subdivisions of the estate property to wit Njia/kiogoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 so that the same can revert to the name of the deceased, for sharing as decreed by the court on 30/6/2021.
10. The applicants seek expeditious implementation of the grant on one hand and the revocation of the same grant on the other hand. This court finds that no sufficient evidence has been led by the applicants to support their assertion that the administrator has slumbered on his duties of administration of the estate, to warrant the revocation of the grant.

## Orders

11. Accordingly, for the reasons set out above, this court finds that the application dated 11/10/2023 is merited and it is allowed in the following terms:
  1. The order for the revocation of the grant of representation issued to Stanley Gitonga M'etirikia is declined.
  2. Title No.s Njia/kiogoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 being the resultant subdivisions of Njia/kiogoi/254 are hereby cancelled and the same ordered to revert to the name of the deceased.
  3. The production of the original title deeds in respect of Njia/kiogoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 being the resultant subdivisions of Njia/kiogoi/254 is dispensed with.
  4. All inhibitions, cautions and/or restrictions subsisting over Njia/kiogoi/1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670 & 1671 being the resultant subdivisions of Njia/kiogoi/254 are lifted.



5. The OCS Kangeta Police Station to supervise the implementation of the orders.
6. The prevailing status quo to be maintained pending the implementation of the grant.
7. Mention for compliance on a date within 60 days from today to be fixed at the Registry.

Order accordingly.

**DATED AND DELIVERED THIS 20<sup>TH</sup> DAY OF MARCH, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Thangicia for the Applicants.

Ms. Mbumbuya for the Respondent.

