



**In re Estate of Arachi Munyua (Deceased) (Succession Cause 167 of 2014) [2024] KEHC 5563 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 167 OF 2014  
TW CHERERE, J  
APRIL 25, 2024  
IN THE MATTER OF THE ESTATE ARACHI MUNYUA  
(DECEASED)  
AND  
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF  
GRANT**

**BETWEEN**

**SAREHE MURIUKI AJI ..... OBJECTOR**

**AND**

**SAMWEL GITUMA ARACHI ..... PETITIONER**

**RULING**

1. By Certificate of Confirmation of Grant dated 29<sup>th</sup> April, 2015 and amended on 20<sup>th</sup> November, 2016, the estate of the deceased Arachi Munyua (Deceased) was distributed as follows:
  1. URINGU 1/1/60 to Benjamin Murira Muitari
  2. Nyaki/Munithu/1084 to Catherine Kinairi Ngubuku
  3. Nyaki/Munithu/99 to Samwel Gituma Arachi
2. By summons dated 14<sup>th</sup> July, 2021, Sarehe Muriuki Aji (Objector/Applicant) seeks an order that the distribution of Nyaki/Munithu/1084 to Catherine Kinairi Ngubuku be revoked.
3. The summons which is supported by the Objector/Applicant's affidavit sworn on 14<sup>th</sup> July, 2021 is based on the ground that Nyaki/Munithu/1084 belongs to his deceased grandfather who happens to bear a similar name to the deceased herein.



4. Samwel Gituma Arachi (Petitioner/Respondent) opposed the summons by his affidavit sworn on 01<sup>st</sup> September, 2021 and maintained that Nyaki/Munithu/1084 belonged to his father the deceased herein.
5. I directed that the summons be heard by way of *viva voce* evidence. Objector/Applicant's called four witnesses in support of his case that Nyaki/Munithu/1084 belonged to his deceased grandfather whom they did not know but had only heard of him having died in the early 1960s.
6. The Petitioner/Respondent called two witnesses in support of his case that Nyaki/Munithu/1084 belonged to his father, the deceased in this cause who died on 16<sup>th</sup> August, 1991.

### **Analysis and Determination**

7. I have considered the summons in the light of the affidavits, the evidence on record and written submissions filed on behalf of the parties and the issue for determination is whether there existed two persons bearing the name of Arachi Munyua.
8. It is trite law that "whoever alleges must prove. Section 107 of the *Evidence Act*, Chapter 80 Laws of Kenya states as follows:
  1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person
9. The *Halsbury's Laws of England*, 4<sup>th</sup> Edition, Volume 17, at paras 13 and 14: describes the burden of proof thus:

"The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case....."
10. The court of appeal in the case *Mbutia Macharia v Annah Mutua & Another* [2017] eKLR discussed the burden of proof and stated thus:

(16) "The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced.
11. In *Hellen Wangari Wangechi v Carumera Muthini Gathua* [2005] eKLR, , Mativo J (as he then was) quoted with approval Lord Brandon in *Rbeir Shpping Co. SA. v Edmunds* [1955] IWL 948 at 955 where the court rendered itself as follows:

"No Judge likes to decide case on the burden of proof if he can legitimately avoid having to do so. There are cases, however in which owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just cause to take."
12. In this case, the Petitioner/Respondent having demonstrated that his father Munyua M'Arachi died on 16<sup>th</sup> August, 1991 as shown on the certificate of death in respect thereof, the burden shifted on the Objector/Applicant to demonstrated that there was another Munyua M'Arachi that died in the 1960s.



13. Other than the oral evidence by the Objector/Applicant and his witnesses, no other evidence was tendered to demonstrated that there existed another person with a similar name to the deceased in this cause.
14. What the Objector/Applicant has done is to throw evidence at the head of the court saying Munyua M'Arachi the owner of Nyaki/Munithu/1084 was my grandfather, I ask you to give me his land parcel number Nyaki/Munithu/1084.
15. From the evidence on record, I find that the Objector/Applicant has failed to discharge the burden of proof that there existed another Munyua M'Arachi other than the deceased herein and his claim over land parcel number Nyaki/Munithu/1084 must hence fail.
16. From the foregoing analysis, the orders that commend to me and which I hereby make are as follows;
  1. The summons for revocation dated 14<sup>th</sup> July, 2021 is unmerited and it is dismissed.
  2. Each party shall bear its own costs

**DELIVERED AT MERU THIS 25<sup>TH</sup> DAY OF APRIL 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Objector/Applicant - Ms. Mugo for Gichunge Muthuri & Co. Advocates

For Petitioner/Respondent - Mr. Ayub for Ayub K.Anampiu & Company Advocates

