



REPUBLIC OF KENYA



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**In re Estate of M'Ithinji M'Anjara (Deceased) (Succession Cause
^99 of 2014) [2024] KEHC 4885 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4885 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

SUCCESSION CAUSE ^99 OF 2014

EM MURIITHI, J

APRIL 25, 2024

IN THE MATTER OF THE ESTATE OF M'Ithinji M'ANJARA (DECEASED)

IN THE MATTER OF

MARGARET CHAKU JOBS OBJECTOR

JUDGMENT

1. By summons under certificate of urgency dated 8/12/2017 under section 76 of the [Law of Succession Act](#) and all other enabling provisions of the law, the objector/applicant seeks:
 1. Spent
 2. That this honourable court be pleased to revoke and/or annul the confirmed grant herein obtained on 14th day of March 2017.
 3. That this Honourable court be pleased to issue an inhibition and/or restriction over;
 - a. Land Parcel no. Nkubu Market Plot No. 255 and Nkuene/Taita/285 pending the hearing and determination of this summons or pending further orders of this court.
 4. That the costs of this application be borne by the petitioners.
2. The application is premised on the grounds on the face of it and supporting affidavit of the applicant sworn on even date. She avers that she is the widow of the deceased while the petitioner is her step child. It has come to her knowledge that the petitioners applied and had the grant confirmed without her involvement, and she has been cultivating on the suit land which was given to her by her husband. She has not denounced her right over the estate or given consent for the distribution of her husband's estate. The petitioners have not disclosed her existence or that of her children. She learnt of this matter through Nkubu PMCC No. 86/2017 and land parcel No. Nkuene/Taita/285 is still registered under her late father's name Ayub Kwaria. Even though her husband and her bought a portion of land measuring 20x80 feet from her mother, they are yet to file the cause in respect of her father. The



petitioner and his brother are seeking to evict her and her children, yet she is also entitled to her husband's estate.

3. The petitioner filed grounds of opposition on 10/6/2019 that;
 1. The objector is not related to the deceased.
 2. The objection is bad in law as no leave has been sought from this Honorable Court to file the same out of time.
 3. The objection is an afterthought after the Petitioner sued the objector in Nkubu ELC 86 of 2017 to be evicted from the estate property.
 4. The application is frivolous, vexatious and an abuse of the process of the Court and should be dismissed entirely with costs to the Petitioner.
4. The petitioner also swore a replying affidavit on 14/6/2019 in opposition to the application. He avers that the objector was merely a caretaker of the deceased rental houses which were adjacent to her home. He complied with all the provisions of the law and sought the consent of all beneficiaries of the estate listed in the chief's letter. The objector is a complete stranger to the deceased and she was not given any land by the deceased to cultivate. The chief's letter produced by the objector is not proof of marriage and the children listed therein are strangers to the estate. The deceased purchased Nkuene/Taita/285 measuring 20 × 80 feet from the objector's mother vide an agreement dated 27/10/1999. The deceased also owned 3 rental rooms on Nkuene/Taita/255 which were donated by the objector vide an agreement dated 8/2/2001. The objector illegally and unlawfully took possession of Nkuene/Taita/255 and 285 after the demise of the deceased which necessitated the filing of Nkubu ELC No. 86/2017 seeking eviction. The objector is an imposter trying to claim a share out of the deceased estate and deprive the rightful dependants their shares.
5. M'Rutere Gakumbuka, Reuben M'Rimberia, Fredrick Mbaya Mutungi and Ayub Kinoti Mbui filed witness statements dated 26/11/2019 averring that the objector was neither married to the deceased nor had any children with him.
6. Gilbert Muthaura Kwiriga and Andrew Kimathi Mwamba filed witness statements dated 10/12/2019 confirming that the objector was indeed married to the deceased and they were blessed with 3 children.

Evidence

7. OW1 Margaret Chaku Jobs and the applicant herein testified that, "I hail from Nkubu. I was a businesswoman. I knew the deceased. He was my husband. He married me. He gave dowry. He was given land and we lived together as husband and wife. I rely on my supporting affidavit filed on 11/12/2017 and the annexures. I adopt them. David Gituma has troubled me. He wants to remove me from where I was left by my husband and he sold it."
8. On cross examination, she stated that, "I have my national Id Card No. 2369167 which shows that I am called Margaret Chaku Jobs (original seen). I was married in 1984. I was married customarily. I do not have any witnesses to state that they know that I was married to the deceased. He was married to charity Nduru (1st wife). I do not know when she was married. The second was Sabera Naitore. I do not know when she was married. The 1st wife had David Gituma, Karuta, Mwirigi and Joshua. The 2nd wife had Phineas Gatobu Mungatia (deceased) and Lucy Karimi. The deceased gave dowry in form of 2 cows and 5 goats. That is all he paid. I know that Kiembe is a requirement in Meru customary marriage. I have not stated that he paid Kiembe. I and the deceased had 3 children. He got them while they were young. He maintained them. We never had any children together. He paid their school fees.



I have no school fees receipts or anything to show that he paid for them. I have no evidence to prove that fact. It is true that the deceased bought from my mother property known as Nkuene/Taita/285. He paid all the purchase price. It is true that I donated 3 rooms in Nkuene/Taita/255 which was next to plot 285. The donation was in writing. I could have given him as a husband. In the agreement we did not agree that I was donating the rooms as a husband. But we were together as a husband and wife. The 3 children of mine are now adults who are married. I have not brought any of them to testify that they were maintained by the deceased. It is not true that I was a caretaker in his properties. It is not true that I entered Nkuene/285 after the deceased died. It is true that the petitioner sued me in Nkubu SRMCC no. 86 of 2017. The court stayed it till my objection herein is determined. They did succession without involving me. It is not true that because of the deceased buying my mother plot 285 and I giving him 2 rooms to him I am forcing myself on him as a wife. The 2nd wife is living at the Uruku property belonging to the deceased. The 1st wife was divorced and went to live in Nayuki. She was then living at Uruku, in the property of the deceased. Mr. Ithinji had constructed for them at Uruku. The deceased did not construct a house for me at Uruku. I have not brought any evidence to show the property in Nkubu where the deceased constructed a house for me to live.”

9. On re-examination, she stated that, “The deceased had married me. I have witnesses to the marriage. They will be coming to testify. During his lifetime, he took care of my children. I was not a caretaker of his properties. We were 3 wives but the first one was divorced. I knew all his people. The first was called charity Nduru. I was never informed about the institution of this cause.”
10. OW 2 Gilbert Muthaura Kwiriga testified that, “I hail from Mitunguu, Kithare. I know the deceased. I know the objector. I also know the petitioner. I recall that on 10/12/2019 I made as statement which I adopt as my evidence in this case.”
11. On cross examination, he stated that, “I do not have my Id card. I have my NHIF card No. 3549460 and born in 1966. It shows that I am the older of Id card No. 21659994 and verifies my name. I know why I am in court. I know the deceased. I knew him from 1990. I do not know when he died. He had 2 wives, the objector and another Isabera. I knew his 3 children gituma, Gatobu and Karimi. I can’t recall when we went to pay dowry for objector. The other wife called Sabera lives in Uruku. I have even been there. The objector has no home at Uruku. I know the customs of Meru Marriages. There is payment of dowry. (pressed to state the requisite steps, the witness refuses to answer). I took dowry with Anthony M’Ithinji. He is not a witness in this case. I saw that Anthony M’Ithinji is the deceased. He had employed me. He was the one paying me. We were not accompanied with anyone else when we took the animals for dowry. I am the witness. When we took dowry we found the objector at her home at Kaguru. That was her home. The deceased and the objector lived in Nkubu town. I do not know in whose house. I am not going to be paid for coming to testify.”
12. On re-examination, he stated that, “The deceased used to live at Nkubu. I know gitonga and Purity. They are the children of the objector. Between Kithare and Nkubu it is 4 kms apart.”
13. OW3 Andrew Kimathi Mwamba testified that, “I hail from Kigane Nkubu area. I know the deceased. He was the husband to the objector. I don’t know David Gituma M’Ithinji but I know his father. I recall recording a statement on 10/12/2019. I wish to adopt it.”
14. On cross examination, he stated that, “I did not carry any identification papers. I have not been promised anything to come and testify. I knew the deceased. He had a wife by the name Margaret Chaku as he brought dowry to our home. I do not know if he had any other wife. I do not know any member of the deceased’s family. The objector is a daughter to my uncle. I have come to testify as the deceased came to give dowry. He came to our home called Kigane. He was with a young man called Muthaura (OW 2). They brought the dowry to Ayb Kuria the father of objector. It was 5 goats and



- two cows. I know the customs of Meru marriage. One goes to the brides home and asks for permission to marry. He comes with elders. If he is allowed, he is told what to bring as dowry. I am 74 years. Under customs he brings 3 things;- a) Offering b) Dowry c) Something for slaughter. The offering is called Kiembe. It is honey, and one coat and a blanket. He also brings a bill for slaughter. Then he pays dowry. These are cows and goats. The cows are two, a bull and heifer. There are also goats that are paid. The deceased gave these things. I stated 2 cows and 5 goats. The deceased was living with the objector in town. I did not go but those who visited the deceased are dead. It was the father and other village mates. The deceased had children with the objector. I know the children. They are 3 in number, Purity, Gacheri and Gitonga. I do not know when they were born. They had been born before the marriage between the deceased and objector. The objector never lived in Kaguru.”
15. On re-examination, he stated that, “I am 74 years old. My chief is Kinoti of Kigane Nguru.”
 16. PW1 David Gituma M’Ithinji testified that, “I hail from Nkubu and I am a farmer. I recall I am the administrator. The deceased was my father. I know the objector. She as the caretaker of the estate of the deceased. I recall that I filed a replying affidavit on 17/6/2019. It is dated 14/6/2019. I wish to rely on it as my evidence. I see paragraph 6. I stated that the objector is not a widow. He had 2 wives whom I have named. In paragraph 7 she was just a caretaker of my father’s rental houses. She was not included in the chief’s letter as a wife. I involved the entire family. She is an imposter. She took plots Nos. 255 and 285 illegally leading to the Nkubu case.”
 17. On cross examination, he stated that, “I knew you from the year when the deceased bought land from your mother. By the time I knew you the houses in which you were a caretaker had not been built. I do not know that the house was built in 1994. I do not know who the fundi was. I do not know who bought the materials. The deceased used to sleep in one of those houses. The money I came to pick from you was rental that you had collected. I did not know that it was contributions for the funeral of the deceased. I used to come to the houses to ask if my father was staying there. I used to ask you if he was there because you were his caretaker. I did not see plot No. 65B. It is not true that you ever-sponsored my child for college fees. The only time you came to our home is during the burial. The chief of my area is different from the one of Nkubu where you lived. I have never known you as a wife of the deceased. I stated that I knew you for 10 years. I do not know that you have been in that plot since 1994. I am not aware that your children and those of the 2nd wife were taken to Makuri girls by the deceased. I used to come for money from you. It is about 3 times. I came and put my things in the father’s house. When it became small, I removed them and went to hire a house. It is not true that he asked you to chase me away a pick up mazda belonging to the deceased. He never owned any pick up. It is not true that my first born son Gitonga was taken care by you.”
 18. When questioned by the court, he stated that, “Isabella M’ithinji is my step mother. She is alive. She lives in Uruku/Nkuene. My mother is called Charity Nduru Karani. She was the first wife. She died on Tuesday 15/9/2020 and we ar.....”
 19. On re-examination, he stated that, “I have known Margaret for 10 years. She never called me to tell me that my father took dowry to her. My father never informed me about it. The children who were taken to Makuri girls do not belong to the deceased.”
 20. PW2 Reuben Gitobu M’rimberia testified that, “I reside at Uruku. I work as a farmer. I know I am before the court to testify. I recorded a statement on 26/11/2019. I pray the court adopt the statement as my evidence.”
 21. On cross examination, he stated that, “I know the deceased M’Ithinji M’Anjara. It is not true he had two homes. He had one home at Uruku. I also heard that he had home at Ithuka. He used to stay at Uruku. I am his age mate. I was born in 1952. (deceased was born in 1935). I agree with that I was not



- his age mate. I belong to the age group that came after his. I do not know Margaret Chaku but I heard she is even taken at his buildings. I heard it in this case. (deceased's shop at Nkubu). I have never been to shops. I do not know where the shop is but I only heard that he had a shop. Margaret was at the funeral but I did not know her. I only know that the deceased had 2 houses. (deceased and Margaret were husband and wife letter by the chief). I have never heard of such information.”
22. PW3 Fredrick Mbaya Mutungi testified that, “I live in Uruku. I work as a farmer. I recorded a statement on 26/11/2019. I pray that court to adopt the statement as my evidence.”
 23. On cross examination, he stated that, “I was born in 1945. I have my Id card. I have lived at Uruku. I have never lived at Nkubu. I do not know Margaret Chaku. I have seen her in court. She is in court. I came to know her in court. My home to the deceased's is about ½ km. We did not see each other everyday but it would not go for a full month. We would see each other after about week. Deceased Ithnji had a house at Nkubu. I only got to hear about it. I do not know him very well. Who told you about this matter? I heard it from David Gituma the son of the deceased. He told me while we were doing this case in court. It is David who told me that Margaret was a caretaker of the deceased. Meru customs allow for more than one wife. Is it true that he would marry without knowledge of the family? One could only marry two wives. Deceased's funeral did you attend. No. I was far. I did not attend.”
 24. On cross examination, he stated that, “It is true one can marry more than 1 wife in Kimeru customs. According to me the deceased had 2 wives. Can one marry without not.....”
 25. PW4 Ayub Kinoti Mburia testified that, “I reside at Uruku. I work as a farmer. I came to your office and we recorded a witness statement. I pray that the court adopts his statements of 26/11/2019.”
 26. On cross examination, he stated that, “My home to the deceased's home is a short distance away (from the court to the riad.....30 meters. I was born 1960. I am not a age mate of deceased. He was older than me. I found the two.....already married when I was a small child. Could have gone to accompany the deceased to pay dowry? From the first wife...I could not be allowed to go and accompany from my age. Sabera was a class 6 while I was in class 3. I was still a boy. I did not participate in the negotiations. I have never been asked to participate in any clan dowry negotiation for the deceased. The deceased could marry other wife. One could even marry 10 wives according to his ability. It is the men to decide where to settle his wives. Margaret Chaku? I have got to know her in court. Did you know deceased has a shop at Nkubu? Yes I heard something like that. I was a neighbor and I heard of his son Gituma and the other wives of the deceased. I do not know where the shop of the deceased are. Margaret is caretaker at the building? It was David Gituma who told me Margaret was a caretaker. I have never accompanied the deceased to the building. I do not know who lived there. I was at the deceased's funeral. Did you see Margaret. There were many people. I did not know her and she could have been there at the funeral.”
 27. On re-examination, he stated that, “Were you involved in the marriage concerning Isabella according to Meru custom? I was sent together with other people to take ewe which was part of marriage. We were asked to take it to the Sabella's parents. I was not interested in any ceremony of marriage after Sabera.”

Submissions

28. The petitioner urges that the objector did not prove that the essentials of a Meru Customary marriage took place, and cites *Hottensiah Wanjiku Yawe v Public Trustee* (1976) eKLR, *David Kiraithe Magambo v Dorothy Ciakaura David* (2012) eKLR, *Re Estate of Justus M'murithi M'bagiri (deceased)* (2019) eKLR, *Priscilla Waruguru Gathigo v Virginia Kanugu Kathigo* (2004) eKLR and *Hellen Tum v Jepkoech Tapkili Metto & another* (2018) eKLR.



29. The objector urges that she customarily got married to the deceased in 1984, dowry was paid to her parents and they lived together with the deceased until his death in 2014, and cites *MRM v JKE* (2018) eKLR and *Re Estate of Joseph Mathiu Iringo (Deceased)* (2018) eKLR. She urges that as a wife of the deceased, her consent ought to have been sought, and cites *Re Estate of Sebastian Mbwiri Kiene (Deceased)* (2019) eKLR.

Analysis and Determination

30. The issue for determination is whether the applicant has proved that she was customarily married to the deceased to justify the grant being revoked.
31. 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.”

32. The beneficiaries listed in the introductory letter of the senior assistant chief of Uruku sub-location dated 23/12/2014 are Isabella M’Ithinji – widow, Samuel Mwirigi – son, Harriet Karuta – daughter (married), David Gituma – son, Joshua Kimathi – son, Phineas Gatobu – son and Lucy Karimi – daughter (married).
33. ‘On 6/12/2012, the chief of Taita Location wrote in his letter that the objector was customarily co-married to the deceased and they had 3 issues namely Purity Karimi, Monica Gaceri and Johnson Gitonga.
34. The applicant testified that, “I knew the deceased. He was my husband. He married me. He gave dowry. He was given land and we lived together as husband and wife.” On cross examination, she stated that, “I was married customarily... The deceased gave dowry in form of 2 cows and 5 goats. That is all he paid. I know that Kiembe is a requirement in Meru customary marriage. I have not stated that he paid Kiembe. I and the deceased had 3 children...He maintained them...He paid their school fees. I have



- no school fees receipts or anything to show that he paid for them. It is true that the deceased bought from my mother property known as Nkuene/Taita/285. He paid all the purchase price. It is true that I donated 3 rooms in Nkuene/Taita/255 which was next to plot 285. The donation was in writing...In the agreement we did not agree that I was donating the rooms as a husband...The 3 children of mine are now adults who are married. I have not brought any of them to testify that they were maintained by the deceased. They did succession without involving me.” On re-examination, she stated that, “The deceased had married me. I have witnesses to the marriage. They will be coming to testify. During his lifetime, he took care of my children...I knew all his people.”
35. OW 2 testified that, “I know the deceased. I know the objector. I also know the petitioner.” On cross examination, he stated that, “...I know the deceased. I knew him from 1990...He had 2 wives, the objector and another Isabera. I knew his 3 children gituma, Gatobu and Karimi. I can’t recall when we went to pay dowry for objector. The other wife called Sabera lives in Uruku...I know the customs of Meru Marriages. There is payment of dowry. (pressed to state the requisite steps, the witness refuses to answer). I took dowry with Anthony M’Ithinji...We were not accompanied with anyone else when we took the animals for dowry. I am the witness. When we took dowry we found the objector at her home at Kaguru.” On re-examination, he stated that, “...I know gitonga and Purity. They are the children of the objector.”
36. OW 3 testified that, “...I know the deceased. He was the husband to the objector. I don’t know David Gituma M’Ithinji but I know his father.” On cross examination, he stated that, “...I knew the deceased. He had a wife by the name Margaret Chaku as he brought dowry to our home...I do not know any member of the deceased’s family. The objector is a daughter to my uncle. I have come to testify as the deceased came to give dowry...He was with a young man called Muthaura (OW 2). They brought the dowry to Ayub Kuria the father of objector. It was 5 goats and two cows. I know the customs of Meru marriage. One goes to the brides home and asks for permission to marry. He comes with elders. If he is allowed, he is told what to bring as dowry...Under customs he brings 3 things;- a) Offering b) Dowry c) Something for slaughter. The offering is called Kiembe. It is honey, and one coat and a blanket. He also brings a bill for slaughter. Then he pays dowry. These are cows and goats. The cows are two, a bull and heifer. There are also goats that are paid. The deceased gave these things. I stated 2 cows and 5 goats. The deceased was living with the objector in town. I did not go but those who visited the deceased are dead. It was the father and other village mates. The deceased had children with the objector. I know the children. They are 3 in number, Purity, Gacheri and Gitonga...They had been born before the marriage between the deceased and objector.”
37. PW1 testified that, “...The deceased was my father. I know the objector. She was the caretaker of the estate of the deceased...I involved the entire family. She is an imposter.” On cross examination, he stated that, “I knew you from the year when the deceased bought land from your mother. By the time I knew you the houses in which you were a caretaker had not been built...The deceased used to sleep in one of those houses. The money I came to pick from you was rental that you had collected. I did not know that it was contributions for the funeral of the deceased...The only time you came to our home is during the burial. The chief of my area is different from the one of Nkubu where you lived.”
38. When questioned by the court, he stated that, “Isabella M’ithinji is my step mother. She is alive. She lives in Uruku/Nkuene. My mother is called Charity Nduru Karani.” On re-examination, he stated that, “I have known Margaret for 10 years. She never called me to tell me that my father took dowry to her. My father never informed me about it.”
39. PW2 testified on cross examination that, “I know the deceased M’Ithinji M’Anjara...He used to stay at Uruku...Margaret was at the funeral but I did not know her. I only know that the deceased had 2



houses. (deceased and Margaret were husband and wife letter by the chief). I have never heard of such information.”

40. PW3 testified on cross examination that, “...I have never been asked to participate in any clan dowry negotiation for the deceased...Margaret Chaku? I have got to know her in court... I was at the deceased’s funeral.” On re-examination, he stated that, “Were you involved in the marriage concerning Isabella according to Meru custom? I was sent together with other people to take ewe which was part of marriage. We were asked to take it to the Sabella’s parents. I was not interested in any ceremony of marriage after Sabera.”
41. Whereas the applicant contends that she was customarily married to the deceased, dowry was paid but Kiembe which is a requirement in Kimeru customs was not paid. Andrew Kimathi, OW3 stated that he and OW2 Gilbert Muthaura took dowry to the objector’s father namely Ayub Kuria. On his part, OW2 stated that he and Anthony M’Ithinji took dowry and they were not accompanied by anyone else. While PW1 stated that the applicant was only the caretaker of the deceased’s rental houses, PW2 and PW3 denied knowing the applicant at all and PW4 stated that the only negotiations he was involved in were between Sabella and the deceased.
42. Section 43 of the Marriage Act provides that:
- “(1) A marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage. (2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage.”
43. OW3 elaborately set out the specific items to be given or paid to the parents of the woman under Meru Customary Law to include dowry of 5 goats and 2 cows, offering which is called Kiembe and a bull to slaughter. He also confirmed that the 3 children of the applicant had been born before the alleged marriage between her and the deceased. OW2 stated that the applicant lived in Kaguru while OW3 affirmed that the applicant has never lived in Kaguru.
44. It was incumbent upon the applicant to prove that she was married to the deceased through Meru customary law, in accordance with her duty under sections 107, 108 and 109 of the Evidence Act that he who alleges must prove.
45. This court finds that the applicant has not proved, on a balance of probabilities that she was married to the deceased in accordance with Meru customs, to warrant revocation of the grant.

Orders

46. Accordingly, for the reasons set out above, the Court finds that the applicant’s application dated 8/12/2017 is without merit and it is dismissed.
47. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances



Mr. Karanja for Objector

Mr. J. Muthomi for Respondent

