



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of M’Mugwika M’Kirigia (Deceased) (Succession Cause
443 of 2007) [2024] KEHC 6477 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 443 OF 2007**

TW CHERERE, J

MAY 30, 2024

**N THE MATTER OF THE ESTATE OF M’MUGWIK
M’KIRIGIA (DECEASED)**

BETWEEN

LYDIA NKIROTE M’MUGWIK OBJECTOR

AND

JOSEPH MBURUGU M’MUGWIK PETITIONER

RULING

Background

1. M’Mugwika M’Kirigia (Deceased) died sometimes on 08th May 2007 and was survived by the following:

Widow

Mboto M’Mugwika

Children

1. Joseph Mburugu M’Mugwika
2. Racheal Gakii M’Mugwika
3. Julius Mbaabu M’Mugwika
4. Sacinta Kaniu M’Mugwika
5. Florence Kendi M’Mugwika
6. Lydia Nkirote M’Mugwika



7. Jane Kainyu Muchiri
2. Deceased's comprised in LR. No. Kiirua/Naari/204. By Certificate of Confirmation of Grant dated 23rd January, 2009 and rectified on 07th July 2021, the estate was distributed as follows:
 1. Mbotto M'Mugwika 2 acres
 2. Joseph Mburugu M'Mugwika 2 acres
 3. Racheal Gakii M'Mugwika 0.50 acres
 4. Julius Mbaabu M'Mugwika 2 acres
 5. Sacinta Kaniu M'Mugwika 0.50 acres
 6. Florence Kendi M'Mugwika 1 acre
 7. Lydia Nkirote M'Mugwika 1 acre
 8. Jane Kainyu Muchiri 1 acre
3. By summons dated 03rd July 2023, Lydia Nkirote M'Mugwika (Objector/Applicant) seeks the following orders:
 1. Revocation of Letters of Administration issued to Joseph Mburugu M'Mugwika (Petitioner/Respondent) on 15th January 2007 and confirmed on 23rd January, 2009
 2. Inhibition on LR. No. Kiirua/Naari/3657 to 3664 which are resultant subdivisions of LR. NO. Kiirua/Naari/204
 3. Costs be borne by Petitioner/Respondent
4. The summons is supported by an affidavit sworn by Objector/Applicant on 03rd July 2023 in which she avers that this cause was filed without her knowledge. Objector/Applicant additionally claims that she is entitled to three acres of the estate.
5. By his replying affidavit sworn on 30th June, 2023, Petitioner/Respondent opposed the summons mainly on the ground that all the beneficiaries were informed about the filing of this cause but Objector/Applicant declined to attend court on the date of confirmation of the grant. That Objector/Applicant was provided for but she similarly failed to attend the survey of the land although she resides in it. Petitioner/Respondent faults the Objector/Applicant for attempting to disrupt the status quo that has existed for the last 16 years.

Analysis and Determination

6. I have carefully considered the court record and the affidavit evidence filed on behalf of both parties.
7. Objector/Applicant has not controverted Petitioner/Respondent's case that she was aware of the filing of the cause and that she failed to attend court on the date the estate was distributed. Objector/Applicant has equally not challenged the Petitioner/Respondent's averments that she has been utilizing the portion distributed to her for close to 16 years and has leased it to a 3rd party and encroached on the widow's portion and these averments are deemed as admitted. In arriving at this conclusion, I find succour in the general principle of law that facts pleaded, or averments deposed to in an affidavit, if not specifically challenged or controverted, are deemed admitted and require no further proof.



8. Further to the foregoing, the Objector/Applicant has not disclosed when she became aware of this cause that was concluded about 15 years ago and the contention that she has been aware of the same all along cannot be far from the truth.
9. Having carefully considered the affidavit evidence on record, I find that the Objector/Applicant has not placed before the court sufficient material that would warrant this court to reopen this cause that was concluded over 15 years ago. Additionally, the fact that Objector/Applicant mistakenly believes that she was entitled to the lion share of the estate is no ground for revocation of the grant.
10. The summons for revocation dated 03rd July 2023 is therefore without merit and it is dismissed.
11. It is however ordered that the share for Mboto M'Mugwika now deceased be distributed to her estate. The Certificate of Confirmation of Grant dated 23rd January, 2009 and rectified on 07th July 2021 shall be further rectified and issued accordingly.
12. Mention 17th October, 2024 to confirm transmission
13. Each party shall bear its own costs.

DATED AT MERU THIS 30TH DAY OF MAY 2024

WAMAE. T. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Objector/Applicant - Mr. Omari for Kaberia Arimba & Company Advocates

For Petitioner/Respondent – Ms. Athieno for J.K.Ntarangwi & Co. Advocates

