



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**(CORAM: CHERERE-J)**  
**SUCCESSION CAUSE NO. 253 OF 2012**  
**IN THE MATTER OF THE ESTATE OF STEPHEN MUTHURI KARURI (DECEASED)**  
**AND**  
**IN THE MATTER OF PROTEST**  
**BETWEEN**  
NKONGE KARURI.....1<sup>ST</sup> PROTESTOR/APPLICANT  
FRANCIS MWITI KARURI.....2<sup>ND</sup> PROTESTOR/APPLICANT  
**AND**  
JULIUS MUTUMA MURWITHANIA.....PETITIONER/RESPONDENT  
**RULING**

**Introduction**

1. **Stephen Muthuri Karuri (Deceased)** and the parties herein are sons of the late **M'Muruithania Kingúa**.
2. As demonstrated by the green card DEXH. 1, the parties are in agreement that **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** belonged to the late **M'Muruithania Kingúa**.
3. The parties are in agreement that the late **M'Muruithania Kingúa** had two wives. The wives and their children are:

**1<sup>st</sup> House**

Rael Kabea M'Muruithania -Widow (deceased)

**Children**

1) Mburugu M'Muruithania - (deceased)

2) Mwenda M'Muruithania

**2<sup>nd</sup> House**

Tabitha Regeria M'Muruithania -Widow (deceased)

**Children**

- 1) Stephen Muthuri M'Muruithania - (deceased)
- 2) Julius Mutuma - Petitioner
- 3) Nkonge Karuri - 1<sup>st</sup> Protestor
- 4) Francis Mwiti - 2<sup>nd</sup> Protestor

4. There's undisputed evidence that **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** belonging to the late **M'Muruithania Kingúa** who is father to the parties herein was transferred to his two sons Gerrison Mburugu M'Muruithania (*Deceased*) and Stephen Muthuri Karuri (*Deceased*) to hold in trust for themselves and their siblings.

5. Following the demise of Stephen Muthuri Karuri (*Deceased*), on 02<sup>nd</sup> April, 1987, Petitioner, applied for and was issued with Letters of Administration on 23<sup>rd</sup> July, 2012. Consequently, a Certificate of Confirmation of Grant was issued on 13.05.2013 distributing ½ share of **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** wholly to Petitioner/Respondent.

6. Subsequently, **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** was partitioned into two parts and the Petitioner was on 06<sup>th</sup> December, 2013 issued with a certificate of title for one part namely **LR.NO. ABOTHUGUCHI/KITHIRUNE/3188**.

#### **Summons for revocation**

7. By summons dated 29<sup>th</sup> January, 2019, the Protestors/Applicants who are brothers of the deceased and the Petitioner sought orders that the Certificate of Confirmation of Grant was issued on 13.05.2013 distributing **LR.NO. ABOTHUGUCHI/KITHIRUNE/3188** which is one part of subdivision of **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** wholly to Petitioner/Respondent be revoked or annulled.

#### **Protestors'/Applicants' Case**

8. Protestors/Applicants born in 1958 and 1963 respectively, stated that the deceased was their brother and that the suit land which originally belonged to the late M'Muruithania Kingúa was registered in the name of the deceased to hold on his own behalf and other family members. While conceding that they were born long after M'Muruithania Kingúa died, it was their evidence that they were born and bred on the suit land where they live to this day. They faulted the Petitioner/Respondent for disinheriting them.

9. The Protestors/Applicants' case was buttressed by Harriet Mburugu stated she married the Gerrison Mburugu M'Muruithania (*Deceased*) who is step-brothers to the parties herein stated that she found the parties herein living on the disputed land with their mother who died in 1987. It was her evidence that the parties herein who are brothers were entitled to an equal share of the disputed land.

10. The Protestors/Applicants' case was further bolstered by Johnson Mbobua Mugambi and Kinyua Mugambi who are cousins to the parties' father. They confirmed that the deceased was given ½ of his father's land to hold in trust for himself and the parties herein.

#### **Petitioner/Respondent Case**

11. While acknowledging that deceased Stephen Muthuri Karuri (*Deceased*) was holding ½ of **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** in trust for himself and his siblings and that the Protestors were born and have lived on the suit land all their lives, he stated that the Protestors were not entitled to inherit the land because they were born long after **M'Muruithania Kingúa** the original owner of the land died in 1954. He proposed that the Protestors share 0.520 Ha and he retains 0.718. Ha being the area he is occupying as demonstrated by a surveyor's report dated 10.12.2019 filed on 31.12.2019. His case was supported by two witnesses who stated that Petitioners were not entitled to deceased's land having been born long after the original owner died.

#### **Analysis and Determination**

12. I have considered the evidence on record and submissions for the Petitioner and the Protestors. The gravamen of this Protest revolves around distribution of ½ of **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** which is now known as **LR.NO. ABOTHUGUCHI/KITHIRUNE/3188**.

13. The deceased and the parties herein are sons of Tabitha Regeria M'Muruithania 2<sup>nd</sup> widow to after the late **M'Muruithania Kingúa** the original owner **ABOTHUGUCHI/KITHIRUNE/414**.

14. The only reason that the Petitioner has advanced in not desiring to share **LR.NO. ABOTHUGUCHI/KITHIRUNE/3188** which is one part of subdivision of **LR.NO. ABOTHUGUCHI/KITHIRUNE/414** with the Protestors is that they were born in 1958 and 1963 long after **M'Muruithania Kingúa** the original owner of the land died in 1954.

15. During cross-examination of the Petitioner, he availed an identity card which reveals that he was born in 1957 which was also long after **M'Muruithania Kingúa** whom he claims is his father and not father to the Protestors' died.

16. His explanation that he was born in 1953 and not 1957 as demonstrated by the identity card is with respect, inadmissible for the reason that the entries in the identity card are deemed to be authentic and cannot be challenged through oral evidence.

17. Having said that, what is borne out of the evidence is that the Petitioner and the Protestors were born long after **M'Muruithania Kingúa** the original owner of the land died in 1954. They are therefore half-brothers to the deceased.

18. The law on benefits by half-brothers/sisters is to be found in **Section 39 of *the Act*** provides:

**(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority**

**a) father; or if dead**

**b) mother; or if dead**

**c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none**

**d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none**

**e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.**

**(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.**

19. It is on record that deceased's parents are deceased and he had no wife, children, brothers and sisters. By virtue of Section 39 of *the Act*, the Protestors and the Petitioners are entitled to equal shares of deceased's estate. The Petitioner cannot purport to hold a better claim over deceased's estate and his acquisition of title, to the exclusion of other beneficiaries cannot be sanctioned by this court. For that reason, Petitioner's contention that he is entitled to a bigger portion is therefore rejected.

20. From the foregoing, I am persuaded that Petitioner obtained the Certificate of Confirmation of Grant issued on 13.05.2013 fraudulently by the making of a false statement and by the concealment of the existence of his half-brothers, with an intention to disinherit them.

23. From the abovementioned analysis, it is hereby ordered:

**1) The certificate of title to LR.NO. ABOTHUGUCHI/KITHIRUNE/3188 is hereby cancelled and it is directed that the same be reverted to the name of Stephen Muthuri Karuri (*Deceased*).**

**2) LR.NO. ABOTHUGUCHI/KITHIRUNE/3188 is distributed as follows:**

**i. 1/3 share to Julius Mutuma Karwithania**

**ii. 1/3 share to Nkonge Karuri**

**iii. 1/3 share to Francis Mwiti**

**DATED AT MERU THIS 20TH DAY OF MAY, 2021**

**T. W. CHERERE**

**JUDGE**

**Court Assistant - Morris Kinoti**

**For Petitioner - Ms. Kaunyangi for M/s Gichunge Muthuri & Co. Advocates**

**For Protestors - Mr. Mutunga for M/s. Mboos Mutunga & Co. Advocates**