



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 187 OF 1992

IN THE MATTER OF THE ESTATE OF IKUNYUA M'MUHAMBI (DECEASED)

PAUL MWIRIGI M'IKUNYUA.....PETITIONER/APPLICANT

VERSUS

ISABERA NCHURUBI MARETE.....OBJECTOR /RESPONDENT

RULING

The deceased herein Ikunyua Mugambi died in 1965 according to letter of Chief of Mwangathe Location dated 5th October 1992.

The Chief confirmed that the deceased had not obtained title deed to parcel of land No. Abothuguchi/Gaitu/554 although he had paid all the fees. He said that the deceased left 3 sons and one of them Marete was left settled at Kariene whereas Mwirigi and Kimathi were left on LR 54.

Paul Mwirigi M'Ikunyua petitioned for Letters of Administration as one of the 2 surviving sons of the deceased entitled to inherit LR 54 and grant was made on 13th day of March 1993. By an application dated 20.9.1999 the grant was confirmed on 22.9.1999 distributing LR Abothuguchi/Gaitu/54 to Joel Kiinja; 5 acres; Erick Muguira – 5 acres

Amos Mutembei Kinyua – 3 acres

Paul Mwirigi M'ikunyua – Balance

The grant that was made to Paul Mwirigi M'Ikunyua was subsequently revoked and fresh grant made jointly between Paul Mwirigi M'ikunyua and Seberina Marete. Seberina Marete filed application for confirmation dated 6.11.2006 of grant made to her jointly with Paul Mwirigi M'ikunyua filed an affidavit of protest sworn on 10.5.2007. On 30.5.2019 this court gave directions that the protest be heard by viva voce evidence Paul Mwirigi testified that Isabella Ncurubi was his late brother Marete M'Ikunyua's wife.

He said 3 of his siblings including Isabella's husband are deceased. He said they wanted LR Abothuguchi/Gaitu/54 distributed. He said Ncurubi lives in Timau. He said LR Abothuguchi/Kariene/546 was in the name of Marete and that it belonged to the deceased. He said LR 54 was in the name of the deceased and that it is 15 acres. He said he wanted LR 54 distributed to him wholly.

In cross examination the protestor said he didn't have particulars or documents for the 3rd parcel of land he was referring to. He said the deceased had 6 children but he was the one entitled to LR Gaitu/54. He admitted that the family of Marete use LR Abothuguchi/Gaitu/54.

The applicant testified and adopted her statement recorded on 17th June 2019 and she produced Green cards of LR Abothuguchi/Gaitu/54 and 546. She said LR 54 was shared to her and her brothers in law by the chief. She said LR 546/Gaitu is registered in her husband's name. She said her husband bought the land. She said LR Abothuguchi/Gaitu/54 should be shared equally between Paul Mwirigi and her husband. She said she currently uses 4 acres and Paul Mwirigi uses 11 acres, M'Itonga M'Turuchiu testified that LR Abothuguchi/Gaitu/54 was subject of discussions before the chief and the same was supposed to be shared equally between Marete and Mwirigi – 7.5 acres each.

In consideration of the evidence on record, the affidavits and submissions by parties herein, this court finds that LR Abothuguchi/Gaitu/546 is in the name of Marete Ikunyua deceased son of the deceased herein having been registered as proprietor on 15.12.1966 and there is nothing to show that the deceased bequeathed the same to him. This court cannot find that it was a gift *inter vivos*.

The only property that remains for distribution is LR Abothuguchi/Gaitu/54 which was in the name of the deceased. Prior to 27.9.1999 when the protestor herein distributed the same but the grant authorizing such distribution was revoked by consent of the parties.

Although the applicant in application for confirmation said she only utilizes 4 acres out of LR 54 her witness said that the suit land was a subject of discussions before the chief and it was agreed that Marete and Mwirigi share it equally. The said witness was not cross –examined and his averments remained uncontroverted. When the applicant wanted to call the chief, Paul Mwirigi’s counsel said there was no need as the chief was going to say what the other witnesses had said. This court therefore takes it that Paul Mwirigi has conceded that this particular suit land was to be shared equally between him and his late brother Marete M’Ikunyua. I do therefore make an order that LR Abothuguchi/Gaitu/54 shall be shared equally between Paul Mwirigi M’Ikunyua and the widow of the late Marete M’Ikunyua in equal shares. Certificate of confirmation to issue in terms as stated above. There shall be no orders as to costs.

The restriction lodged in Register of LR Abothuguchi/Gaitu/54 on 29.9.1999 and inhibition lodged on 19.4.2000 are hereby lifted forthwith.

HON A. ONG’INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 23rd DAY OF JANUARY 2020.

In the presence of :

C/A: Kinoti :-

Petitioner:- Mr Muthama holding brief for Kimathi Kiara for Petitioner

Objector:-Mr Gachuki Advocate for Objector

HON A. ONG’INJO

JUDGE