



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 454 OF 2008

IN THE MATTER OF THE ESTATE OF M'MBUI M'IMANYARA (DECEASED)

STANLEY GITONGA MBIJIWE.....1ST PETITIONER

-V-

CHARLES MBIJIWE M' MBUI.....2ND PETITIONER

FINAL J U D G M E N T

1. By an interim judgment made on 1st February, 2016, Gikonyo J authorized the 2 petitioners to be joint administrators of the estate of the late **M'Mbui M'Imanyara (deceased)** who died on 15th July, 1998. He directed the parties to file an application for confirmation within a specified period but they failed.
2. The matter came up severally with orders that the parties file an application on distribution, but none filed. On 22nd June, 2018, Mrima J gave final directions that an application for confirmation be filed in default the grant be revoked. By 18th October, 2018, no such application had been filed. However, since the parties had filed affidavits giving their own proposals on the mode of distribution, the court decided to treat the same as an application for confirmation instead of revoking the grant.
3. The deceased was survived by **Charles Mbijiwe M'Mbui (son), Evangeline Kaburo (daughter), Monicah Regeria (daughter), and Margaret Mwari (daughter)**. He left **LR. ABOTHUGUCHI/ KITHIRUNE/241** and **Land Title NO. I.R 89043** as forming his estate.
4. When the parties appeared before me on 18th October 2018, each had his own mode of distribution by way of affidavits. The parties then agreed that **Title No. I.R 89043 be distributed** as follows:-
 - a) **Evangeline Kaburo - 15 acres**
 - b) **Monica Regeria - 20 acres**
 - c) **Margaret Mwari - 15 acres**
 - d) **Charles Mbijiwe - Balance**
5. Further, **Evangeline Kaburo, Monica Regeria and Margaret Mwari** renounced any further interest in the estate. The court therefore directed that the rest of the estate would be distributed upon oral evidence being taken. The evidence was in respect of the 2nd petitioner's proposal on the distribution of **L.R. Abothuguchi/Kithurine/241** vis a vis the 1st petitioner's claim that the same should be shared to him wholly.
6. The two petitioners filed their respective affidavits on that property. The matter came up for hearing on 26th November, 2018. When the matter was called out in the morning, all the parties were present whereby the court directed that it be heard at 12.15 pm. However, when the matter was called out at 12.35pm, only the 2nd petitioner and his advocate were present. The 1st petitioner who was present earlier in the morning was nowhere to be seen. The matter therefore proceeded in his absence.
7. **PW1** was **Charles Mbijiwe M'Mbui**, the 2nd petitioner. He testified that the deceased was his father. He was survived with one son, himself and 3 daughters. That he, together with his sisters had already agreed on the sharing of **I.R 89043**. That the other beneficiaries had no interest in **Abothuguchi/Kithurine/241**. That Plot Nos. 1595 and 1594 had been consolidated to revert to **Abothuguchi/Kithurine/241**.

8. He further testified that Stanley Gitonga (1st petitioner), was his first born and he had other children. That Plot No. 241 should come to him and the same be shared in terms of Paragraph 6 of his affidavit dated 4th September 2018. He further denied that the deceased had given any property to Stanley Gitonga during his lifetime.

9. As already stated, the 1st petitioner did not appear to be cross examined on his affidavit. He had stated in his affidavit sworn on 6th October, 2018 that the deceased had stated that he should inherit **L.R. No. Abothuguchi/Kithurine/1595** since he was named after him.

10. I have carefully considered the proposed mode of distribution by both 1st and 2nd petitioner as set out in their respective affidavits. I have also considered the evidence on record and the consent of the parties made in court on 18th October 2018.

11. The issue for determination is how **L.R. No. Abothuguchi/Kithurine/241** should be distributed. The contention by the 1st petitioner was that the deceased had gifted him that property before his death. This contention was however, not supported by any evidence. The 1st petitioner did not disclose when the gift was made, where and who was present. He never produced any documentary evidence in terms of **section 31 of the Law of Succession Act, Cap 160**.

12. It is also not in dispute that the 1st petitioner is a son of the 2nd petitioner. This succession cause therefore relates to his grandfather. His father is still alive. Having failed to prove that he was gifted by the deceased during his lifetime, his claim, if any, can only be through the 2nd petitioner.

13. In this regard, taking into totality all the circumstances in this case, the consent recorded by the parties in court on 18th October 2018 and the evidence of the 2nd petitioner which was unchallenged, I make the following orders: -

a) I revoke the grant issued to the petitioners on 1st February, 2017.

b) I issue a fresh grant to Charles Mbijiwe M'Mbui and confirm the same as follows: -

1. LAND PARCEL NO. IR 89043

a) Evangeline Kaburo - 15 acres

b) Monica Regeria - 20 acres

c) Margaret Mwari - 15 acres

d) Charles Mbijiwe - Balance

2. LR ABOTHUGUCHI/KITHIRUNE/241

a) Geoffrey Mbogori - 2 acres

b) Stanley Gitonga - 1 acre

c) Benard Gatobu - 1 acre

d) Stephen Gikunda - 1 acre

e) E. A. Pentecostal Church- ¼ acre

f) Charles Mbijiwe M'Mbui - Balance

14. This being a family matter, there will be no order as to costs.

DATED and DELIVERED at Meru this 21st day of February, 2019.

A. MABEYA

JUDGE