



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 227 OF 2004

IN THE MATTER OF ESTATE OF M'MWITHIMBU

M'MWIIRA ALIAS MWITHIMBU TUBU (DECEASED)

BASILIO M'MUNGANIA M'MWITHIMBU.....1ST APPLICANT

STEPHEN GITONGA M'RIMBERIA.....2ND APPLICANT

VS

THOMAS MBURUGU M'MBWI.....PETITIONER

RULING

By an application dated 29th June 2017 Mrs Ntarangwi Advocate for applicant sought that grant made to Basilio M'Mungania M'Mwithimbu and Thomas Mburugu M'Mbwi be confirmed. The application is supported by the affidavit of Basilio M'Mungania M'Mwithimbu sworn on 29th June 2017 proposing mode of distribution as follows:-

(1) L.R.No. Kiirua/Ruri/512

Lucy Mukiri

Consolata Gatwiri

Jeniffer Mwari

Hellen Karegi M'Mburi

Josephine Makena

Mary Kinya

To share 2 acres in equal shares.

Jeaninah Karambu

Charity Nkatha

Judith Kiende

Agnes Kagendo

Caroline Kajuju

2 acres to be shared equally

The remaining land is to go to Thomas Mburugu, Simon Kirimi, James Muthuiya, Stanley Mwongera and Patrick Mutethia to get 2.5 acres each.

This proposal is nearly similar to what was agreed on in chief's letter dated 28th July 1998.

Basilio M'Mungania and Thomas Mburugu also made a proposal for distribution in affidavit dated 29th June 2017. The grant of letters of Administration was revoked because the petitioner omitted the names of the beneficiaries as shown in the affidavit of the applicant to application for revocation sworn on 6th day of October 2011 at paragraph 17 and confirmed at paragraph 2 of the affidavit of Geoffrey Mboroki and paragraph 6 of Thomas Mburugus affidavit sworn on 9th July 2013. The estate should therefore be inherited by the children of the deceased and/or their survivors where those beneficiaries are deceased.

In that respect it is not explained why and how the Thomas Mburugu M'Mbui made the proposal in his affidavit. The only parcel of land making up the estate is 16.5 acres and the proposal by Basilio M'Mungania M'Mwithimbu to share the estate equally is constitutional and legal but the legal representative Margaret Kang'ongi should also be provided for unless the survivors renounce their right to benefit from their mothers share or unless there is no such survivor. Certificate of confirmation to issue. The costs of the cause shall be borne by each party.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 21ST DAY OF JUNE 2018.

IN THE PRESENCE OF:

C/A:

Applicants:- Ms Nyaga holding brief for Ntarangwi

Petitioner:-Ms Nyenyire Advocate – N/A

HON. A.ONG'INJO

JUDGE