



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 265 OF 1994**

**IN THE MATTER OF THE ESTATE OF MBOROKI KOBIA (DECEASED)**

**FREDRICK MUTHOMI MBOROKI.....PETITIONER**

**-VS-**

**REUBEN GUANTAI MBOROKI.....APPLICANT**

**R U L I N G**

1. This succession cause relates to the estate of **Mboroki Kobia (deceased)** who died on 11<sup>th</sup> April 1992. **Fredrick Muthomi Mboroki** petitioned for Letters of Administration Intestate on 29<sup>th</sup> August, 1994 and the same were issued to him on 18<sup>th</sup> September, 1995.
2. On 15<sup>th</sup> July 2015, a notice having been issued to the parties pursuant to **Section 73 of the Law of Succession Act Cap 160 of the Laws of Kenya (“the Act”)** and in absence of any steps taken by the parties to further prosecute the matter, the said Grant was revoked under **Section 76 (d) (1) of the Act**.
3. On 7<sup>th</sup> March, 2018, the applicant filed a Summons pursuant to **Rules 49 and 73 of the Probate and Administration Rules**, seeking, inter alia, the setting aside of the orders made on 15<sup>th</sup> July, 2015, that set aside the Petitioner’s cause for want of prosecution and reinstatement of the same. He also sought the substitution of the Petitioner with the Applicant as the Administrator of the estate and consequent thereto, the grant be confirmed.
4. The application was supported by the grounds on the face of it and an affidavit sworn by the applicant. It was contended that failure to prosecute the matter was not intentional but was occasioned by lack of knowledge on part of the petitioner who did not know whether it was his duty to take further steps to have the succession cause finalized and that the applicant was eager and anxious of having the matter concluded.
5. When the matter came up for hearing on 11<sup>th</sup> April, 2018, all the beneficiaries were in court and none opposed the application for substitution. However, the petitioner opposed the confirmation on the grounds that he was not agreeable with the way one of the properties constituting the estate, namely **Plot No. 145**, had been shared out and consequently urged the court to assess the boundaries of that property.
6. I have carefully considered the application which was uncontested save for the distribution of **Plot No. 145**. The applicant contended that the petitioner failed to prosecute the matter because he did not know that it was his duty to take further steps and have the Succession Cause concluded. I note from the record that the petitioner was acting in person. He may not have understood the requirement of the law which may have contributed to his failure to apply for the confirmation thereof. I am satisfied that there is good reason to reinstate the matter as sought by the applicant. Accordingly, I set aside the orders made on 15<sup>th</sup> July, 2015 and reinstate the Cause for hearing.
7. With regard to the prayer for substitution of the petitioner with the applicant as the Administrator of the estate, the same was not opposed. I accordingly grant the same.
8. The final prayer is that of confirmation. The deceased left behind three beneficiaries, namely, **Fredrick Muthomi Mboroki, Reuben Guantai Mboroki** and **Samson Gatobu Mboroki**. It is not in dispute that the only properties that constitute the estate of the deceased are **L.R. No. ABOTHUGUCI/U-KAONGO/565** and **L.R. No. ABOTHUGUCHI/KARIENE/145**.
9. The applicant has at paragraph 7 of the affidavit in support to the Summons proposed that the two parcels of land be shared equally amongst the beneficiaries. All the beneficiaries are agreeable to the proposed mode of distribution by the applicant except the petitioner. He opposes the proposed mode of distribution on the ground that he is not happy with the way **L.R. No. ABOTHUGUCHI/KARIENE/145** has been distributed on the ground. He urged the court to assess the boundaries of that property.
10. It is imperative to note that the applicant has proposed to distribute the subject property equally amongst the beneficiaries. The petitioner

did not contend that he was opposed to equal distribution of that property, but the boundaries of the same. The jurisdiction of a Family Court such as this is; to ascertain who the beneficiaries of the deceased are; what constitutes his estate and consequently distribute the estate to the beneficiaries. All other matters are to be settled elsewhere, before the civil court.

11. **Section 38 of the Act** provides that:-

*“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”.*

12. In view of the foregoing, I find that the proposed distribution is in accordance with the law and I will adopt it. The petitioner’s case seems to be how the property is shared on the ground. That clearly is not within the purview of this court. He may pursue his remedies elsewhere. For now, the estate will be distributed as follows:-

a) **L.R. No. ABOTHUGUCI/U-KAONGO/565 (0.49 ha)**

**Fredrick Muthomi Mboroki - 0.163 ha**

**Reuben Guantai Mboroki - 0.163 ha**

**Samson Gatobu Mboroki - 0.163 ha**

b) **L.R. No. ABOTHUGUCHI/KARIENE/145 (0.765 ha)**

**Fredrick Muthomi Mboroki - 0.225 ha**

**Reuben Guantai Mboroki - 0.225 ha**

**Samson Gatobu Mboroki - 0.225 ha**

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

**DATED and DELIVERED** at Meru this 14<sup>th</sup> day of June, 2018.

**A. MABEYA**

**JUDGE**