



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT MERU

SUCCESSION CAUSE NO. 322 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE N N ALIAS N K - DECEASED

AKT.....APPLICANT

VERSUS

Razario M'Mai M'Rukunga.....RESPONDENT

JUDGEMENT

From the ruling delivered by Justice Makau on 24th April 2012. It came out that Razario M'Mai M'Rukunga occupied L.R.No. Nyaki/Thuura/1097 in July 2005 long after the deceased had died on 10th October 1966.

The Chief wrote a letter dated 27th May 2010 identifying CK and AK as daughter and son of the deceased herein. The deceased left behind parcel No. Nyaki/Thuura/1097.

The application dated 17th February 2012 was dismissed for reasons that the applicant and the Respondent occupied identified/separate portions of suit land and that the Respondent had not been interfering with the Respondents portion nor harvesting the applicants crops and trees.

The Objectors 6 witnesses testified saying that Objectors mother was the 1st wife of the deceased and that the Objector was 2nd child to the deceased by his 1st wife and therefore entitled to inherit from his estate.

Petitioner send the objector was son of Rukunga and not son to deceased herein. He said his father had 2 wives namely M and JK. She said the 1st wife separated from his father and had one child namely CK. He said his mother was the 2nd wife and sired 5 children and he was one of them. He said the Objector came in 2005 and claimed J had permitted him to come and stay with them. The petitioner produced 2 letters one inviting objector to attend District Officers meeting. In regard to his occupation of the land in question and the 2nd confirming that objector was wrongfully occupying the land in question.

The petitioner's witness – Peter Kauna confirmed that the Petitioner and Objector are currently occupying parcel of land in question. He confirmed the objector's mother was the deceased persons 1st wife but she left and went back to her parents.

He said the land in dispute was initially shared between the petitioner and his deceased brother. He said the petitioner occupies the upper part of the land whereas the objector occupies the lower part. He said petitioners Mother was alive when the objector came and occupied the land and refused to leave.

He confirmed the deceased didn't say how he wished to have land shared. He said that by the time objectors mother left she had one child. She left when the deceased was jailed.

He said S brought the objector and he was circumcised at the home of the deceased. In re-examination he confirmed that objector was son to the deceased persons 1st wife but not the deceased persons 1st wife but not the deceased person's son. He confirmed that one could be a child by virtue of being circumcised in ones home.

From the evidence adduced by both the objector and the petitioners witnesses the issues for determination are:-

- Whether the objector has proved he was a child to the deceased and/or dependants.

The 7 witnesses (including objector) who testified supported the objectors claim. Objector witness no. 7 said that the deceased educated the

objector and even had him circumcised at his home.

The petitioners witness also confirms that S, the deceased persons daughter brought the objector and he was circumcised at the deceased persons home. It is not explained on what account objector could be brought for the ceremony of passing into adulthood at the home of the deceased if he was not his son. Objector witness no. 3 stated that the land was subdivided into 3 portions and parties herein didn't complain.

This court in the circumstances finds that the objectors evidence is overwhelming and he has proved that he is a child to the deceased and therefore under S.35 of the Law of Succession is entitled to inherit equally like any of the other children recognised by Petitioner and his witness.

The Petitioner in cross examination admitted he had a brother who died and who is survived by children. He also said he had sisters who got married but died. He failed to disclose this fact when filing this petition. The petitioner's brother deceased, the petitioner S and the sisters of the petitioner are entitled to share the estate unless they renounce their rights of their surviving children renounced their rights.

Objection dated 7th September 2011 and filed on 12th September 2011 is allowed. Grant is made to the petitioner and objector jointly. The suit land to be shared between the petitioner objector, surviving beneficiaries /Dependants of petitioners deceased brother, Selina and any surviving sisters of the petitions. No orders as to costs.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, SIGNED AND DATED THIS 9TH DAY OF AUGUST 2018

IN THE PRESENCE OF:

C/A:- Penina

Petitioner: -MS Ayata Advocate for Rimita for Objector.

MS Atieno Advocate Holding brief for Ms Waigira for Petitioner.

HON. A.ONG'INJO

JUDGE