



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 115 OF 2008**

**IN THE MATTER OF THE ESTATE OF RAIBUTA RAIBUNI - DECEASED**

**JOHN THURANIRA IMPWI .....1<sup>ST</sup> PETITIONER**

**VS**

**JOSHUA M'GITUMA IMPWI.....PROTESTER**

**RULING**

The deceased herein died intestate on 20<sup>th</sup> May 1984 leaving behind one property namely Nyaki/Chugu/31. He was survived by one daughter Maritha M'wiku M'Rimunya; two of the daughters and the widow as well as the son having died while he was still alive and by the time petition was filed.

Grant of Letters of Administration was made to the deceased person's grandson John Thurania Impwi on 28<sup>th</sup> July 2007. On 26.11.2008 the Administrator filed summons for confirmation seeking confirmation of the Letters of Administration to which Joshua M.Gituma Impwi protested opposing mode of distribution proposed by John Thurania distributing the entire estate to himself.

He said his surviving aunt was not interested in the estate of her deceased father. In response to the affidavit in protest John Thurania Impwi averred that the suit land was given to him by the deceased before he died and that he took care of the deceased in his old age and sickly condition and buried his remains. He averred that protester was herein given the land in 1972 or at all and has never utilized the land. He said their deceased father was given land which their siblings shared.

He said that the land is his exclusively and he didn't need the consent of the protester to file petition. In affidavit sworn on 10<sup>th</sup> November 2009 the Administrator claimed that in 1983 he called his children and told them that, Administrator herein should inherit his land and his cows should go to the applicant Joshua M'Gituma Impwi.

Joshua M. Gituma Impwi avers that his grandfather gave him land in question in 1972 and he was utilizing the entire land and in the 1990s his grandfather allowed administrator to use half of the land. The protester said that dispute as to entitlement and/or inheritance of land in dispute was resolved in 1997 by clan elders as per MFP1 and that he and John Thurania should share land equally. He said it is their mother who called elders to resolve the dispute. He said the administrator started using land in 2002. He said the Petitioner/Administrator uprooted fence which the deceased and 2 elders planted. Protester said that he used to stay with the deceased and took care of him.

Gilbert Kuimbe the brother to protester and the Administrator said land in dispute belonged to their grandfather and it is the 2 are the ones who used to land and had used it along time. He said their fathers land was shared land and John and Joshua got smaller portions because they were to benefit from their grandfathers property. He said the deceased had established fence showing each of the portions. He said he was present when the fence was planted Gilbert was present.

He said the Chief Mukumi and Joseph Mutuma were present when dispute was being discussed. He said that many people are named after the deceased. Fredrick also said that it is John and Joshua who are to share land in dispute. He said they had 6 meetings and even before their mother died concerning the dispute.

John Mwangi testified that petitioner is his neighbour as well as Joshua. He said John and Joshua had land dispute and that elders decided that Joshua should give John a goat so that he can give him land according to Kimeru customs. The petitioner said that because the deceased gave him everything, land and cows he took care of him and when he died none of his brothers assisted in funeral arrangements. He said subsequently they started having meetings to talk over land.

He said he got one acre out of his father's land in Kithoka and Joshua also got one acre. He said that Joshua was to get Muriki's land in Kithoka and Muriki was to get land belonging to brother to deceased in Chugu because he was named after deceased person's brother. Petitioner requested that they be given one month to go and discuss the matter at home. In cross examination petitioner said that deceased

had 2 other grandchildren named after him but he didn't give them land. He said he took care of the deceased in his old age. He said he got one acre out of his father's land. He said his brother Gilbert got 2 acres out of his father's land and one plot.

From the evidence on record in respect of protest the only child of the deceased who survived him was Maritha Mwiki who ought to have benefited from the estate but whose consent was not sought and no provision is made to her. From the evidence of the witnesses herein it appears she subsequently died while this cause was still pending.

The protester and the Administrator therefore remain as the only beneficiaries to the estate herein. The brothers of the protester and Administrator said this land is to be shared between John and Joshua. This court finds that in the absence of Maritha Mwiki the land should be shared equally between John and Joshua. In event Maritha is still alive then she should get one acre out of this particular land as John and Joshua have benefitted from their deceased persons land. That is order of this court.

**HON. A.ONG'INJO**

**JUDGE**

**RULING, DELIVERED, DATED AND SIGNED IN COURT IN**

**2<sup>nd</sup> AUGUST 2018.**

**In the presence of:**

C/A: Penina

Petitioner:-Present in person

Objector:-Present in person

**HON. A.ONG'INJO**

**JUDGE**