



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CASE NO. 159 OF 1990

IN THE MATTER OF ESTATE OF PETERO IMPWI NABEA (DCD)

STANLEY M'ITWARUCHIU M'IMPWIPETITIONER

RULING

The deceased Petero Impwi Nabea died on 16th July 1989 and was survived by

1. Julia Ngano M'Impwi
2. Stanley M'Itwaruchiu
3. Jacob Kimathi
4. Hellen Mukiri
5. Margaret Kathambi
6. Janet Miriko
7. Florence Karwirwa

The deceased was registered proprietor of parcel of land No. Ntima/Igoki/504 measuring 3.52 acres. Grant of Letters of Administration was made on 19th November 1991 but then set aside by D.C. Porter J on 17th February 1992 for reasons that objection which is subject of this ruling had been filed by Isaac M'Mwarama M'Nabea. The son of initial objector was substituted when the objector died on 15th March 1996.

The objection was heard by viva voce evidence. The objection sought that this court declares that the deceased held a portion of the suit land in trust for the initial objector and therefore they are entitled to inherit from the intestate estate of the deceased. 1st objector witness said the land belonged to his grandfather and he was entitled as well as the deceased persons children are entitled. He said he had lived on the said parcel of land and has 3 houses and kitchen and also has crops. He said his father was entitled to half of the land in dispute.

2nd Objector witness the brother of 1st objector witness and son to Isaac Mwarania – Deceased said both his father and the deceased herein were buried on the disputed piece of land.

The village elder – Mukira Rimbere testified that the parties herein came from his village and lived together with their families on the land that their fathers were given by their grandfather M'Nabea.

He said the land was registered in the name of Petero and Isaac was not present and Petero was to hold it in trust for his children and the children of Isaac. He said he was present when the grandfather of the parties herein created a boundary to separate the family of Petero and Isaac.

He said that Petero died before transferring land to Isaac and elders met a resolved that the land belongs to both families and should be shared equally. He said when Petero died he was about 100 years and had no dispute with his brother Isaac. He said elders told petitioner to stay on his portion of the land but he didn't listen.

The petitioner testified on 27th June 2018 and said when he obtained grant of Letters of Administration to his father's estate which was subsequently confirmed he distributed the estate to himself, Jacob Kimathi, Hellen Mukiri. He produced the Green Card – Ex P1. He said his uncle came to court after estate was distributed to object. He said his uncle is not entitled to a share of the estate. He denied that L.R.

No. 1504 was ancestral land. He said his grandfather was in Kietuene and it was shared amongst his children and Isaac got land from the father.

He said Isaac Mwarama sold half of the land that his father gave him and registered the remainder in the name of his son Gerald Kaaria. He admitted that objector uses about ½ an acre of land in question and he occupies 3 acres. He said that the uncles 5 children were not all brought upon the parcel of land in question. He said it is only his uncles last born who was born and bred on L.R. 1504. He said he didn't have particulars of land he said Isaac was supposed to move to. He used John Maituma also occupies L.R. 1504 as he doesn't have another land.

From the evidence on record for the objectors and petitioner as well as submissions the issue is whether this court has jurisdiction to declare that parcel of land in question was held in trust by the deceased for the benefit of the deceased objector and his children. From the evidence on record, both the deceased and the initial objector died and were buried on the parcel of land in question. The 1st objector witness is confirmed by the 2nd witness and the 3rd witness who is the Area Manager/village Elder as residing on parcel of land in question.

The petition admits that John Maitina Mwarania occupies some portion which he estimates as 0.50 acre of the land in question. The objection is therefore valid. However this court lacks jurisdiction to entertain the cause of determining whether the deceased held the land in trust for himself and his brother in this succession cause. In the circumstances the objectors will be referred to the Environment and Land court to seek redress as to whether the land in question is ancestral land and whether same was held in trust for their benefit. In the meantime this court will make an order that Stanley M'Twaruchiu and John Maitima be administrators to the estate of the deceased herein and that status quo be maintained until the ELC determines whether the land is ancestral land and whether it was held in trust.

HON. A.ONG'INJO

JUDGE

JUDGMENT DELIVERED, SIGNED AND DATED THIDAY OF OCTOBER 2018.

27.9.2018

Before Adwera.

Ms Nyagah Advocate for Petitioner/Respondent.

M/S Charles Kariuki and Kiome Advocate for Applicant/Objector – N/a

Court

Ruling Delivered, dated and signed in court on 27.9.2018.

HON. A.ONG'INJO

JUDGE