

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 48 OF 2014

In the Matter of the Estate of M'Mukira Mwanganu alias Mukira s/o Mwanganu (Deceased)

TABITHA NTIBUKA MBOGOR.....1ST PETITIONER

Versus

JULIUS GITONGA MARETE.....2ND PETITIONER

RULING

[1] Parties herein are family members. But cannot agree on how to live peaceably in a land they claim under inheritance. Unless otherwise permitted by law or valid will, the first persons to be entitled to an estate are the children of the deceased. Grandchildren, unless they are dependants of the deceased in the sense of the law, would ordinarily claim the share of their late parent under the doctrine of representation. The 1st Petitioner is a daughter of the deceased. The 2nd Petitioner is a grandchild. He must never fathom that he would disposes the daughter of the deceased of the estate because he is a man and she is a woman. This would smell of prohibited discrimination and would out rightly be exorcised by the Constitution specifically by article 27 thereof. With this in mind, the court asked parties to agree on how they will utilize the estate on the basis of fairness as the proceedings are heard. None lives on the estate land but they use the land to eke a living. I note that the 2nd Petitioner and his brother utilize the greater portion of the estate property leaving the daughter of the deceased with a paltry 0.3 acres. This is unsatisfactory state of things and should be put right in the interim as the case proceeds. The 1st Petitioner- the daughter of the deceased- suggests that the estate be apportioned in two equal portions; one half to be utilized by her; and the other half by the 2nd petitioner and his brother. This proposal is fair given the fact that the grandsons are children of one of the children of the deceased but now deceased. The 2nd petitioner also stated that the estate land is divided into two equal portions with a public road separating the two portions. I therefore direct that the portion on the left side of the road shall be utilized by the 2nd Petitioner and his brother whilst the one on the right side of the road shall be utilized by the 1st petitioner. This is not distribution as distribution is yet to be determined. This is a desirable order demarcating how each party shall cultivate the estate land of their late father whilst distribution is pending. I make this order after hearing submissions by parties and pursuant to the power of court in section 47 and rule 73 of the Law of Succession Act and Probate and Administration Rules, respectively. The court shall also give directions on the expeditious hearing of confirmation of grant proceedings. It is so ordered.

Dated, signed and delivered in open court at Meru this 29th day of October 2018

F. GIKONYO

JUDGE

In presence of

Ngeno for Kimathi for 1st petitioner

Mokua for Kimathi for 2nd petitioner

F. GIKONYO

JUDGE