



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 196 OF 2013

IN THE MATTER OF THE ESTATE OF M'MBUTURA M'TWANTHUKU - DCD

TABITHA NJIRU N'RINGERA PETITIONER/RESPONDENT

VS

KABURU M'MBUTURA APPLICANT/OBJECTOR

RULING

The deceased M'Mbutura M'Twanthuku died intestate on 23rd April 1999 domiciled in Mugambone Village – Mariene within Meru County.

The deceased had 4 children by the time the Chief of Mariene Location wrote letters dated 5th April 2013 identifying the survivors to deceased estate, 2 of the beneficiaries had died as follows:

- 1) M'Ringera Mbutura – Deceased
- 2) Joseph Kaburu – Alive
- 3) Kinya Mbijiwe – Deceased
- 4) John Koome Ngera

The Chief identified Tabitha Njiru as wife to M'Ringera Mbutura.

The only piece of land the deceased left registered in his name is L.R. Abothuguchi/Mariene/104 which value was estimated at Kshs. 2,000,000.

Tabitha Njiru was appointed Administrator on 8th July 2013 but that grant was revoked on 2nd November 2011 and a new one made jointly to Tabitha Njiru and Kaburu M'Mbutura the son of the deceased.

The court then directed that evidence be adduced to establish claim by the parties.

In his evidence the applicant Kaberia M'Mbutura sought that court determines that L.R. Abothuguchi/Mariene/104 is to devolve to him as he was the one in occupation and was using the land even before the deceased died.

He said the deceased had shared his land to her sons and the petitioner's husband was given L.R 1485/Katheri/Kijja which is one acre. In cross examination the protestor/applicant said that L.R. Abothuguchi/Mariene/860 was transferred to him by the deceased whereas M'Ringera got L.R Abothuguchi/Mariene/860. He said L.R. Katheri/Kijja/1485 was also given to his late brother M'Ringera.

He admitted M'Ringera was the 1st to be registered as proprietor. He said his grand father lived on L.R. 1485 and that he also had his house on L.R/1485. He said there are elders who witnessed his father's wishes that he should inherit L.R/104 which is one acre. He said M'Ringeria cautioned L.R 104 in 1974 and the caution had not been discharged. He said that M'Ringeria lodged caution because the deceased wanted to sell the land.

He said his 1st wife's home is on L.R Abothuguchi/Mariene/861. He said he married his 2nd wife before his father died and that she lives on L.R 104. He said the late brother M'Ringeria had 480 coffee trees on L.R 104 but he uprooted them and the deceased gave him the land.

He said the deceased person's house was on L.R 861. He said Tabitha Njiru is not entitled to claim L.R 104.

In re-examination he said L.R 104 is one acre same to L.R 1485. He said that his brother M'Ringeria now deceased when given L.R 1485 during adjudication. Joseph Mutwiri said Mbutura and M'Ringeria were his neighbour and were known to him. He said he's chairman of their clan – Mbutura clan.

He said during the deceased person's lifetime he called elders to witness him share his land to his sons. That the land at Kinjo was to go to M'Ringeria – deceased husband of Tabitha – the petitioner and the land in Mariene was for Kaburu. That the deceased also shared his 8 acres piece of land equally between the sons. He said Minutes of the meeting called by deceased were not recorded. He said L.R Abothuguchi/Katheri/1485 belonged to the deceased and was given to M'Ringeria. He admitted there was no evidence land belonged to the deceased. He said the objectors 1st home is on L.R 861. He said objector moved from L.R 1485 to L.R 8618 later to L.R 104. He said the objector Kaburu had constructed a house and walls of L.R 104 even before his father died. He said M'Ringeria had coffee trees on L.R 104 but he uprooted when he was told the land belongs to Kaburu the objector. He said the petitioner complained to elders of the clan but it was concluded land belonged to Kaburu the objector.

Isabella Nchoga Ringera testified in support of objector. She said she is a neighbour. She said M'Ringeria wife Tabitha used to till L.R 104 before same was given to Kaburu and when Kaburu married his 2nd wife he settled on L.R 104.

Tabitha Njiru on the other hand testified and said that L.R. Abothuguchi/Mariene/104 was registered in the name of her father in law and should be distributed equally between her late husband's family and the objector.

She said L.R 1485 was in her husband's name and not estate property. She said that her husband lodged caution on L.R 104 so that it could not be sold.

He said the land her husband sold was given to him as a gift by his namesake. She said the deceased had 2 sons and one daughter. She said John Koome was not son to the deceased. She said that she didn't attend meeting called by clan elders at Chief's camp because the cause herein was already in court.

She said when she got married she found her deceased husband's family were settled on L.R 1485 together with the objector. She admitted her father in law the deceased was born and brought up in L.R 1485 but the land was registered in her husband's name.

She said that her husband's name sake gave him L.R 104 and should be shared between her husband and the brother in law.

She said there was no record of gift to her husband. She said her husband died in 1982 but prior to his death he had stopped using the land. She said her husband vacated L.R 104 to enable the deceased herein and the objector use the land.

She said her husband paid a goat to acquire L.R 1485. M'Kiome testified in support of Tabitha Njiru. He said L.R 104 is occupied by Kaburu the objector. He said Kaburu occupied the land in 1987 when the deceased was still alive.

He said he witnessed Tabitha's husband plant coffee on L.R 104. He said currently he doesn't know owner of the coffee on L.R 104. He said the deceased had 3 children 2 sons and daughters. He said he doesn't come from deceased person's clan and he didn't know how the deceased shared his land.

He said that Kaburu the objector now occupies the land and that he and deceased were using the land. He said that petitioner and the husband were not in occupation of the land and that he is the one who removed his coffee from L.R 104. He said he didn't know if M'Ringeria benefited from any other land from his father.

From the evidence on record the issues for determination is

- 1) Who are the beneficiaries to deceased person's estate?
- 2) What assets fell to distribution in the estate/
- 3) Whether any of the beneficiaries benefited inter vivos

From the petitioners own evidence L.R Abothuguchi/Mariene/1485 was ancestral land. The grand father of her husband, her father in law, her husband and the objector herein were all born and brought up on the said parcel of land.

She was indeed married and she found the family settled on the suit land before the deceased had shared land to her husband and Kaburu 1.722 ha each namely Abothuguchi/Mariene/860 and 861.

The petitioner and her witness confirm that long before the petitioners husband died in 1982 he had stopped using L.R 104. The deceased person was alive then and that Kaburu and the deceased were the ones using L.R 104 and later in 1987 Kaburu settled his 2nd wife on L.R 104 L.R 1485 which the petitioner's husband got registered in his name is one acre and L.R 104 which is now in dispute is one acre.

The petitioner's husband and Kaburu had also benefited from L.R 860 and 861 which measured 01.722 Ha each respectively and this court's finding is that if the petitioner is given a share in L.R 104 on account of her deceased husband she will benefit more unfairly to the other beneficiaries to the estate.

This court therefore finds that the petitioners husband the Late M'Ringeria benefited inter vivo from the deceased herein who got him registered as proprietor of the ancestral land which he was entitled to that is L.R Abothuguchi/Mariene/1485 and Abothuguchi/Mariene/860 and any more claim from the estate would amount to inequitable distribution of the estate and will prejudice Kaburu M'Mbutura.

This court also finds that in the absence of any other beneficiary Kaburu M'Mbutura would be entitled wholly to L.R Abothuguchi/Mariene/104.

A certificate will issue distributing L.R Abothuguchi/Mariene/104 to Kaburu M'Mbutura.

HON. A. ONG'INJO

JUDGE

RULING DELIVERED, SIGNED AND DATED THIS 29TH DAY OF NOVEMBER 2018

IN THE PRESENCE OF:

M'Muthamia Advocate for Objector

Mr Kaimenyi Advocate Holding brief for Basilio Gitonga for Petitioner.

HON. A.ONG'INJO

JUDGE