



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 149 OF 2009

**IN THE MATTER OF THE ESTATE OF M'IRANGU M'NTHAKA alias IRAMBU NTHAKA -
DCD**

TITUS RIUNGU M'IRAMBU.....PETITIONER

VS

JOSPHAT MUGAMBI M'IRAMBU.....OBJECTOR

RULING

The deceased M'Irangu M'Nthaka died on 14th January 1984 domiciled at upper Kithangari.

According to letter dated 30th June 2008 which by Chief of Kithangari Location the deceased was survived by the following:

- 1) Harriet Nduru Muriuki – Daughter
- 2) Edith Karimi - Daughter
- 3) Mary Kabithi – Daughter
- 4) Agnes Ntue Zakaria – Daughter
- 5) Titus Riungu – Son
- 6) Josphat Mugambi – Son
- 7) Irine Kithiru – Daughter

The only assets in the name of the deceased by the time of his death was identified as L.R Abogeta/Kithangari/416. Titus Riungu M'Irambu petitioned for Letters of Administration and he was appointed on 5th August 2009. Titus Riungu filed summons dated 7th May 2014 for confirmation of grant and proposed that estate devolved to:

Josephat Mugambi – 3 acres

Himself – Balance

Josephat Mugambi M'Irambu filed affidavit of protest sworn on 10th July 2014 saying that Nkanata Kirui had blessed original parcel L.R No. Abogeta/Upper Kithangari/307 to the petitioner whereas the deceased had blessed him with entire parcel L.R Abogeta/Upper Kithangari/416 and that the petitioner had no right to.

The protestor said the petitioner subdivided L.R 307 into 2 parcels L.R 678 and 679 and sold and transferred Abogeta/Upper Kithangari/679 to M'Atheru M'Mbijiwe. Protestor said the petitioner filed petition secretly and he only came to know about it when he was served with application for confirmation. The protest sought that grant be revoked or annulled on the grounds, proceedings were defective in substance.

That grant was obtained fraudulently by making false statement on by the concealment of a fact essential parcel of land to justify the grant not with stand the allegations was made in ignorance or in advently.

The protestor avers that if grant is not revoked the rightful heir of the deceased over L.R 416 will suffer loss and disinherited of the entire asset of the deceased.

The petitioner filed reply to protest and said the protestor signed consent to filing of petition. He avers the deceased died in the state intestate and didn't give the protestor the whole of the estate as alleged and the protestor allegations are unfounded in law.

The petitioner said that they met at home and agreed that protestor would get 3 acres of land, the petitioner to get one acres and the sisters to get one acre and that the protestor had recused on the agreement. He said that he had taken into account gift given to him by his uncle and that is why he was getting only once acre.

That in consideration of protestors change of mind the other beneficiaries are now claiming equal shares of the estate. The protest was heard by viva voce evidence. Protestor called one witness who said that just after he had been circumcised he and protestors uncle gave his land to the petitioner.

The protestor confirmed that L.R. Abogeta/Upper Kithangari/416 was in the name of the deceased and that their sister Irine kithiru stays in her parents house and he has given her once acre which all the sisters should share in event that they die with their husbands. He said if the estate is to be distributed equally then even what was given to petitioner by their uncle would be distributed equally, protestor said her sister were also claiming a share of the estate. The petitioner admitted that M'Nkanata was registered owner of L.R 307 which he subdivided into L.R. 679 whereas he gave M'Arimi L.R 678.

He said M'Arimi gave him the land because he used to take care of his livestock and also took care of him in old age.

He said that M'Arimi gave him the land as a gift because his only child a daughter died. He said he wanted the estate of his father to be shared to all the beneficiaries. He said that M'Arimi had bought land from Nkanata Kirui and after her death he petitioned for grant of Letters of Administration to Kirui's estate and transferred the portion he had sold to M'Arimi. He confirmed that protestor witness witnessed when Nkanata Kirui gave him land.

The petitioner witness Geoffrey Kaburu said he knew the Petitioner and protestor are sons of M'Nkanata and that he was a witness when Nkanata Kirui gave petitioner land.

The 3 petitioner witness Beatrice Koome said she was from same clan as the petitioner and the protestor. She said Nkanata Kirui was like a grandfather and protestor. She said petitioner was given land by Nkanata Kirui because he assisted him in old age.

The petitioner's submission was to the effect estate should be distributed equally regardless of the gender of the deceased person children.

The protestors submissions are that he is the one who occupies and has developed L.R 416 and that petitioner occupies and has developed L.R 307 which was given to him by Nkanata Kirui and that protestor should get the entire estate solely as the sisters have not shown interest whereas the petitioner benefited inter vivos.

It is not disputed that the petitioner got land from Nkanata Kirui but there is no evidence to show that, that land which he was given the deceased was entitled to it in anyway so that it could be treated as gift inter vivos. It is also true that the daughters of the deceased have not shown any interest demanding for a share or denouncing their right to the estate but the protestor himself said that one of their sisters namely Irene stays in their mothers house and used one acre out of the estate which the petitioner was proposed should be shared by the sisters.

This court is not dealing with estate of Nkanata Kirui and can't discuss mode of distribution to his estate if protestor wants a share in that estate he should apply in the charge. I do therefore find that since the daughters of the deceased have not protested also proposal of getting one acre they will share the same equally amongst themselves whereas the petitioner will get one acre out of the estate of the balance of 3 acres will go to the protestor.

This belief should be able to enhance the cordial relationship between the protestor and the petitioner. This court will not make an order as to costs. Each party will bear their own costs. Certificate of confirmation to issue forthwith.

HON. A.ONG'INJO

JUDGE

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

In the presence:

C/A:- Kinoti

Mr Gikunda Anampwi for Petitioner

Mr Muthamia holding brief

Mr Abubakar holding brief for Kimathi for Protester

HON. A.ONG'INJO

JUDGE