



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 143 OF 2005**

**IN THE MATTER OF THE ESTATE OF THE LATE ELIJAH M'IKANATHA BAITHAKI - DCD**

**KITHUKE M'IKANATHA.....PETITIONER/RESPONDENT**

**VS**

**ZAKAYO KABERI.....OBJECTOR/APPLICANT**

**JUDGMENT**

The deceased M'Ikanatha Baithaki died on the 8<sup>th</sup> day of November 1999 domiciled at Kirindara and according to Form P & A 5 left behind the following survivors:

- Kithure M'Ikanatha - Son
- Nkoroi M'Ikanatha - Daughter
- Mukawamuthara M'Ikanatha - Daughter

Kithure M'Ikanatha petitioned for Letters of Administration in Maua Principal Magistrate Court Succession Cause No. 12 of 2000 to which Zakayo Kaberia objected by an affidavit sworn on 17<sup>th</sup> July 2001 for reasons the petitioner was cousin to objector and nephew to the deceased and that the deceased held land in trust of him.

From the evidence for objector, his grandfather M'Lintari was the brother of the deceased herein and that the objector's witness including Senior Chief confirmed that the deceased gathered and consolidated his land together with his late brothers land and registered it in his name.

It is also the evidence of objectors witness that the mother to the objector remained in the land belonging to her father and along even after the deceased registered it in his name and when she died her body was buried in the said parcel of land.

According to evidence on record the petitioner therein demolished the houses belonging to the objector and his deceased mother in a bid to evict him from suit land.

The senior chief's evidence – PW5 and PW6 Assistant Chief of Kirindara issued instructions saying that the mother of the objector was the only heir to her father's estate and therefore the portion of land due to objector's grand father which ought to have gone to the deceased mother of the objector should automatically be inherited by the objector.

The objector said that the portion is 2.06 acres and the balance of estate in L.R/Ithima/Ntunene/20 should be shared by petitioner and her sisters as agreed.

The Assistant Chief of Kirindara has written a letter dated 8<sup>th</sup> July 2003 to that effect. The chief of Ntunene location also wrote Exh 1 dated 1<sup>st</sup> July 2005 to that effect.

This court finds that the objector claim is genuine and the evidence in his favour overwhelms the petitioners mere and selfish denials.

The petitioners and objector are hereby appointed administrators of the estate of the deceased.

A certificate of confirmation should issue distributing 2.6 acres to the objector and balance to the petitioners.

Each party will bear their own costs.

**HON. A.ONG'INJO**

**JUDGE**

**JUDGMENT SIGNED, DELIVERED AND DATED THIS 29<sup>TH</sup> DAY OF NOVEMBER 2018.**

**In the presence:**

C/A:- Kinoti

Ms Wambugu Advocate for Petitioner

Ms Harun Gitonga and Co. Advocate for Objector

**Ms Wambugu:**

We pray to be furnished with copy of ruling.

**Order**

Copy of ruling to be supplied upon payment of copying charges.

**HON. A.ONG'INJO**

**JUDGE**