



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 68 OF 2006**

**IN THE MATTER OF THE ESTATE OF M'MINGAINE WA MINGAINE (DCD)**

**M'WETI M'MINGAINE.....PETITIONER**

**VERSUS**

**MEEME BAIMARIA.....OBJECTOR**

**RULING**

This cause relates to the estate of the late M'MINGAINE WA MINGAINE died on 30<sup>th</sup> November 2005 leaving behind Land Parcel No. ITHIMA/NTUNENE/704.

He was also survived by a son namely MEEME BAIMARIA as per letter from Chief of Ntunene Location dated 13<sup>th</sup> February 2006 daughter Beatrice Kangai Ntarangwi as showed in form P & A 5

Meeme Baimaria was appointed administrator on 26<sup>th</sup> July 2006.

In application for confirmation dated 8<sup>th</sup> march 2013:

- Kawira M'Mingaine
- M'Mbirithia M'Mingaine
- Muruthi Baimaria
- Ntaragwi Baimaria

Consented to confirmation of grant and distribution of estate as filed by Meeme Baimaria in which he proposed that the estate be distributed equally between him and his only sister.

Affidavit of protest was filed by M'Mweti M'Mingaine on 8<sup>th</sup> September 2013.

From the evidence adduced by the witnesses of Meeme Baimaria, I do find that their evidence overwhelms the evidence of M'Mweti M'Mingaine who has never lived on the suit land and even buried his parents on the land he lives on. Currently he doesn't give a satisfactory reason as to where he buried his parents on the land he claims to have bought if indeed he claims to have bought it using his money the parents had their own land where they could have been buried.

The said M'Mweti also said he cut the tress he had planted in suit land and the only reason must have been that he did not belong to him. He didn't call any witness to prove he bought land he is cultivating, occupying or that he didn't get it from his father.

Meeme's cousin the 2<sup>nd</sup> witness said it is Meeme and Ntarangwi who were not given land by their father. He said the deceased died in 1972 and left where Meeme and others had been settled in their respective homes in parcels of land he had given them.

The 3<sup>rd</sup> witness said the father of Meeme and M'Mweti instructed them to ensure his 2 sons were settled on the land in question because they were still very young by the time he was dying.

M'Mweti didn't bring any other clan elder to refuse what Meeme's witnesses said.

I do therefore find that M'Mweti protest has no merit since it has been proved on a balance of probabilities that he benefited intrevivos.

I do find that the suit parcel of land should be shared between Meeme Baimaria, Ntaragwi Baimaria, Kawira M'Mingaine, Muruthi Baimaria.

The parcel of land in question measures 5.80 acres. It was proposed that same be shared equally between Meeme and Ntaragwi. This court orders that it is distributed as follows:

- |                       |            |
|-----------------------|------------|
| a) Meeme Baimaria     | 2.40 acres |
| b) Ntarangwi Baimaria | 2.40 acres |
| c) Kawira Baimaria    | 0.50 acres |
| d) Muruthi Baimaria   | 0.50 acres |

The protestor, M'Mweti M'Mingaine to pay costs of protest.

**HON. A. ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2018**

**IN THE PRESENCE OF:**

C/A – Kinoti

M/s Aketch for Objector

Mr. Kiogora Arithi for Petitioner

**Court** – Certified copy of ruling to be supplied upon payment of charges.

**HON. A. ONG'INJO**

**JUDGE**

22/11/2018