



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 112 OF 2008

In the Matter of the Estate of Misheck M' Mboroki M'Raijuni alias Misheck Mboroki (Deceased)

ROBERT MUTWIRI M'MBOROKI.....1ST APPLICANT

RUTH NKATHA RUKARIA.....2ND APPLICANT

Versus

ESTHER KATAHAO M'MBOROKI.....1ST RESPONDENT

ERRA TIRINDI GATOBU.....2ND RESPONDENT

SARAH KIENDE M'MBOROKI.....3RD RESPONDENT

JACKLINE NTINYARI KAREMI.....4TH RESPONDENT

EDWARD MWAKI RIUNGU.....5TH RESPONDENT

RULING

[1] Before me are two applications. One is dated 29th July 2013 and the other 24th July 2014. But before determining these applications, one thing is really startling and requires to be unraveled first. On the one hand, the 1st Applicant has claimed under oath that he was L.R NO ABOTHUGUCHI/IGANE/2156 by the deceased who is his grandfather in 1978 and that he has lived on that land all his life. He is apprehensive that he will be evicted by the 4th and 5th Respondents who are purchasers of the estate property. On the other hand, the 2nd Respondent in her Replying Affidavit sworn on 10th April 2014 averred that the father of the 1st Applicant Mugambi M'Mboroki was given by the deceased L.R NO ABOTHUGUCHI/IGANE/621 which is occupied by the family of the 1st Applicant. She stated that the 1st Applicant even buried their late father on that land. According to her, the 1st Applicant has never lived on the estate property; he only put up a shed in order to claim occupation.

[2] The 5th Respondent added another twist to this scenario. He stated under oath that he bought L.R NO ABOTHUGUCHI/IGANE/2156 from the 1st Respondent who is the rightful beneficial owner of the said land as well as the holder of grant of letters of administration of the estate herein. He told the court that he took immediate possession and use of the land in question; he has undertaken extensive developments thereon, *inter alia*, he has constructed a permanent dwelling house, planted coffee trees, bananas and other subsistence crops. He insisted that none of the Applicants have ever lived on the said land and that the allegations by the 1st Applicant to the contrary are false and dishonest and merely calculated at

misleading the court. He termed the Applicants as busy-bodies and speculators for land on which they have no claim whatsoever.

[3] Now, these conflicting facts call for a pragmatic approach. Accordingly, I order that the Executive Officer together with a surveyor form the Meru County survey office, within 21 days to visit the two pieces of land, namely L.R NO ABOTHUGUCHI/IGANE/261 and ABOTHUGUCHI/IGANE/2156 and establish:-

(1) Whether the family of the 1st Applicant lives on L.R NO ABOTHUGUCHI/IGANE/261 or ABOTHUGUCHI/IGANE/2156;

(2) Whether the 4th Respondent has constructed a permanent dwelling house, planted coffee and other subsistence crops on L.R NO ABOTHUGUCHI/IGANE/2156; and who actually lives on this land; and

(3) Whether the 1st Applicant has constructed a shed on L.R NO ABOTHUGUCHI/IGANE/2156.

The report on the above matters shall be filed within 30 days of today and shall form part of the record. Upon receipt of the report, I shall give further directions on the matter. Meanwhile, the ruling in respect of the applications dated 29th July 2013 and 24th July 2014 is arrested until this report is received. It is so ordered.

Dated, signed and delivered in open court at Meru this 28th day of February 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Kimaita advocate for 5th respondent

Mr. Wamache advocate for 4th respondent

Mr. Mutegi advocate for Mr. Mutuma advocate for 1st and 2nd applicant

Mr. Thangicia advocate for 1st, 2nd and 3rd respondent

F. GIKONYO

JUDGE