



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. 704 OF 2011**

**IN THE MATTER OF THE ESTATE OF MBOROKI MARETE**

**SEVERINA MWENDWA MBOROKI.....PETITIONER**

**Versus**

**MARGRET KAGUTE RIMIRI.....OBJECTOR**

**J U D G M E N T**

1. **MBOROKI MARETE** (“the deceased”) is said to have died on 20<sup>th</sup> April, 1993. He left behind four (4) heirs, namely:-

- a) **Severina Mwendwa Mboroki – widow**
- b) **Brown Muguna Mboroki – son**
- c) **Sampaula Miriko Mboroki – daughter**
- d) **Margret Kagute Rimiri – daughter- in-law**

He also left property LR. No. Abothuguchi/U-Kaongo/505 (hereinafter “plot 505”) as the only asset to his estate.

2. On 13<sup>th</sup> December, 2011, his widow, Severina Mwendwa Mboroki (hereinafter “the Petitioner”) petitioned for grant of letters of administration intestate. The grant was issued to her on 21<sup>st</sup> March, 2012. On 5<sup>th</sup> December, 2012, the Objector filed an objection to the making of the grant. In that objection, she claimed to be a daughter in-law to the deceased and her consent had not been obtained before the filing of the Petition; that she had been kicked out of the deceased’s property by Brown Muguna and Sampaula Miriko since 1990. On 23<sup>rd</sup> January, 2013, the Petitioner applied for the confirmation of the grant and proposed to distribute of the estate as follows:-

- i) Brown Muguna Mboroki – 0.50 acre
- ii) Magret Kagute Rimili – 0.50 acre
- iii) Seberina Mwendwa Mboroki - Balance

3. On 25<sup>th</sup> April, 2014, the Objector filed a Protest to the proposed distribution. She contended that her husband predeceased her father-in-law, the deceased; that before the deceased passed on, he had

distributed or donated plot 505 to her; that the deceased had shown the Petitioner and her sons another property where they live and which they have shared amongst themselves but she did not know its registration number. That she had already developed plot 505 and the Petitioner was only envious of her.

4. The parties gave oral testimonies. The Objector testified that her husband Jacob Rimiri died in 1989 while her father-in-law, the deceased, died in 1990. That after the demise of the Objector's husband, the clan took her to plot 505 which was measuring 2.5 acres an act which the deceased approved; that she was to use and has been using plot 505 with Brown Muguna on a 50/50 basis. That however, at some point the Petitioner came and built on the property but later her children came and removed the Petitioner there from. The Objector confirmed that she had no problem if the Petitioner got a quarter an acre of the property.

5. On her part, the Petitioner told the Court that she was the widow to the deceased; that she intended to distribute the estate into three (3) equal shares for herself, her son Brown Muguna and the Objector. She denied the Objector's claim that the deceased had given to the Objector  $\frac{3}{4}$  of that land.

6. I have considered the evidence on record. The Petitioner is the widow of the deceased as well as the Mother-in-law to the Objector. On the other hand, the Objector is a daughter-in-law to both the Petitioner and the deceased. The two did not have any problem with Brown Muguna, a son of the deceased getting 0.5 acres in the subject property. The dispute is whether the Petitioner should get 0.5 or less in that property.

7. From the testimonies on record, it is not in dispute that the Objector lives on and has constructed a house on and carried out development on the property. She and the aforesaid Brown Muguna are in actual occupation of the property. The Objector insisted that she occupies  $\frac{3}{4}$  acres that was given to her by the deceased. However, it transpired at the hearing that it was the Petitioner and the clan who settled the Objector on the property after the demise of the Objector's husband. There was no concrete evidence to show the actual portion or acreage which the Objector was occupying at the time of trial. To this court's mind, it was incumbent upon the Objector to produce consistent and acceptable evidence to the effect that it is the deceased who had settled her on a  $\frac{3}{4}$  acre portion of the subject property. However, as it turned out at the trial, it is the clan with the help of the Petitioner and area the Chief who settled the Objector on the subject property. But, the area of such settlement and occupation was not clear. In her testimony, she admitted that she basically filed her Objection and Protest because she did not know whether she and her children were taken care of or considered in the proposed distribution by the Petitioner.

8. To my mind, since the Objector's claim is for the benefit of the estate of her late husband, a son of the deceased or alternatively, as a dependent of the deceased, there arises no reason or ground why she should be entitled to a share bigger than either, the other son of the deceased or the widow. To this court's mind, equity is equality. Justice will be served if the estate is shared between the three (3), the Objector, the widow and Brown Muguna Mboroki equally.

9. Accordingly, the subject property, **ABOTHUGUCHI/U-KAONGO/505** measuring 0.6Ha is to be distributed to the three beneficiaries equally as follows:-

- a) Seberina Mwendwa Mboroki – 0.2Ha
- b) Margret Kagute Rimili – 0.2Ha
- c) Brown Muguna Mboroki – 0.2Ha

For the avoidance of any doubt, the share of the Objector is to be carved out from the area she is currently occupying as she testified that she had extensively developed the same.

It is so decreed.

**DATED** and **DELIVERED** at Meru this 22<sup>nd</sup> day of June, 2017.

**A. MABEYA**

**JUDGE**

**22/06/2017**