

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 351 OF 2004

In the Matter of the Estate of the Kiramunya M'imula(Deceased)

CIOMATAU M'IMULA PETITIONER/RESPONDENT

-Versus-

CHARLES GITONGA KIRAMUNYA OBJECTOR/APPLICANT

PARTIAL RULING

[1] Upon careful consideration of the application dated 6th June 2007 by way of summons for revocation of grant, I must admit that this case presents a dilemma. On the one hand, the Applicant claims that the deceased was their father- the husband to their mother- now late- one Njerusha Gomana with whom they sired three children, to wit, the Applicant, Christopher Thurania and Christine Muthoni. According to the Applicant, the Petitioner evicted them from the suit land over ten years ago and has now completely disinherited them. And that she filed this cause without involving them yet they are the rightful heirs of the deceased. For that reason, he is seeking for revocation of the grant. The Petitioner, on the other hand, claims that the deceased- who is her son- was never married and left no children. She accused these three persons of plotting to steal her land in order to sell it. She denied categorically that the three are the children of the deceased. She even proposed a DNA testing to be done in order to prove her claim. These two accounts leave a lot to be desired. The evidence recorded does not reveal any conviction to believe or disbelief either of the accounts; all there is the word of one side against the other. And this being a succession court, there is need to get to the

truth if substantive justice is to be served in this case. Therefore, as paternity is in controversy, I shall adopt a practical method which shall assist the court to resolve the issue. Accordingly, I direct DNA testing to be carried out within sixty (60) days of today on the three Applicants and the Petitioner to prove whether the three are siblings of the deceased. It is not in doubt that the Petitioner is the biological mother of the deceased and her DNA sample is necessary. Each party will bear own costs of the exercise. The report on DNA Testing will be part of the record and shall be considered in the decision in respect of the application for revocation of grant. It is so ordered.

Dated, signed and delivered in open court at Meru this 16th day of October 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Omari advocate for Mr.Ondieki advocate for Petitioner

Mr. Omari advocate for Mr. Mburugu advocate for Objector

F. GIKONYO

JUDGE