



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2035 OF 2013**

**IN THE MATTER OF THE ESTATE OF SIMON KOINA (DECEASED)**

**JOHN NGIGE MUTHUKU.....APPLICANT/OBJECTOR**

**VERSUS**

**RAHAB MUTHONI WAINAINA.....RESPONDENT/PETITIONER**

**JUDGMENT**

1. Simon Koina Wainaina died intestate on 14th September 1997. He was survived by four children: Rahab Muthoni Wainaina (respondent/petitioner), Tabitha Wangari Koina, David Muthuku Koina and Eunice Wanjiku Koina. The respondent with the consent of the other beneficiaries, petitioned for grant of letters of administration intestate in Limuru SPM Court Succession Cause No.41 of 2010. It was stated that the deceased left only one asset forming his estate: LIMURU/KAMIRITHU/T.529. The grant was issued to her on 22nd July 2010.

2. Upon the petitioner's application for confirmation of the grant issued, the applicant John Ngige Muthuku filed an objection to the same on the ground that he is a beneficiary of L.R No. LIMURU/KAMIRITHU/T 529 by virtue of being a brother to the deceased. It was the applicant's case that although the property forming the estate of the deceased was registered in the name of the deceased, he was entitled to half share of the said land parcel as the same was family land inherited from Munyuira Muthuku but registered in the name of the deceased as a trustee of the family. He further stated that he together with his family have been in occupation of the same since 1959. He thus wanted to be included as a beneficiary and his entitlement to half share of the land be duly registered so as to protect his interest and that of his family. He referred to a family meeting held on 07/11/2004 wherein it was resolved that the land in issue herein be shared equally between the family of the deceased and himself.

3. In the course of hearing the objection proceedings, the magistrate's court at Limuru noted that the value of the property forming the estate was well over 100,000/- and thus the case was referred to this court for determination.

4. Each party testified in court in support of their cases. The petitioner testified that LR No. Limuru/Kamirithu/T.529 belonged to the deceased exclusively and that the same should be shared equally among his surviving children as per the proposed distribution in the summons for confirmation of grant. She stated that the land was inherited by the deceased from his elder brother Munyuira Muthuku and was registered in the name of the deceased on 18/4/91. As concerns land parcel Kijabe/Kijabe/Block 11/403, she stated that she did not know about the land and did not know how his brother David became a co-owner of the same together with the applicant herein. She further testified that two brothers of the deceased, including the applicant herein, stay at the land in question, but that one brother, Joseph, moved to Tarambana while the applicant refused to move. She informed the court that the applicant herein was in the process of building a permanent structure on the land in question despite an injunction issued by the Magistrate's court at Limuru on 7/2/13. She denied knowledge of the deliberations of the meeting held on 7/11/04 stating that she was not invited to the same.

5. The applicant on the other hand testified that his father, one Muthuku wa Rioki had three wives and owned three parcels of land adjoining each other: Limuru/ Kamirithu/T.125,T.329 and T.529. Each house was given a plot but was left with a small parcel of land which was also shared. He reiterated that the plot in question was registered in the name of the deceased during land demarcation to hold in trust for his other brothers. Further that his other brother Joseph was given land in Tarambana and thus has no claim on the land in question. He also denied having sold part of the Kijabe land to David for Kshs.200,000 but said that he gave him the same for free as had been agreed pursuant to the family meeting.

6. Both parties filed their written submissions which have been duly considered. It is evident that the applicant/objector herein has been occupation of the half share of the land in question herein since 1959, a fact not denied by the petitioner. The applicant testified that he together with his family have established their matrimonial home in the said piece of land and depend on the same for their livelihood. I do note that the said parcel was registered in the name of the deceased in 1991. The deceased herein died in 1997. All that time between the registration and before the death of the deceased it was not indicated that the deceased had any issue with his brother (the applicant) who was occupying the said land parcel. I accept the applicant's evidence and allow the objection. It is evident that the applicant is entitled to half share of L.R No. Limuru/Kamirithu/T529 while the four children of the deceased are entitled to the other half share. I therefore order that the grant be confirmed in those terms. Each party shall bear own costs.

**DATED and DELIVERED at NAIROBI this 18<sup>TH</sup> JANUARY 2016**

**A.O. MUCHELULE**

**JUDGE**