



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. 263 OF 2007**

**IN THE MATTER OF THE ESTATE OF M'THURANIRA M'BUURII – DECEASED**

**AND**

**MWIRIGI M'BUURI ..... PETITIONER**

**VERSUS**

**CATHERINE KINYA THURANIRA ..... 1ST OBJECTOR**

**JOY MWENDA THURANIRA ..... 2ND OBJECTOR**

**(CORAM: J. A. MAKAU – J.)**

**JUDGMENT**

1. The petitioner **Mwirigi M'Buuri** brother to the deceased petitioned for grant of letters of Administration intestate to the deceased's estate on 23rd July 2007. That before grant of letters of administration intestate were issued, the Objector filed Notice of Objection to the making of the grant on 2nd October 2007, on the ground that the deceased was their father, that the petition was filed secretly without the investment of the Objectors and the Chief's letter was false in respect of the particulars of the death of the deceased and his beneficiaries. The Petitioner filed reply to the Objector's objection terming the Objectors as strangers to the deceased's estate. The Objectors filed another to petition for grant

2. **Mr. Gichunge** learned Advocate appeared for the petitioner, while Mr. Mburungu learned Advocate appeared for the Objectors. That on 13th May 2014 both counsel agreed the matter be determined by way of oral evidence and agreed on issues for determination as follows:

**(a) Whether the Objectors are daughters of the deceased?**

**(b) Who between the petitioner should be the administrator?**

3. **The Objectors** gave evidence and called two witnesses while the Petitioners gave evidence and called one witness.

4. **OW1 Catherine Kinya Thurania**, testified that she comes from Katheri and is aged 48 years. She stated she is one of the Objectors with her sister Joy Mwendwa M'thuranira. She stated she was born in 1968. That her father is Thurania M'buuri (deceased). That he died on 15th May 1971 referring to attached copy of death certificate to her affidavit, which she produced as exhibit 01. She testified at the time of death of her father he was married to Alice Karegi and that the two were blessed with two children namely Catherine Kinya and Joy Mwendwa, the two Objectors. That upon death of their

father, their mother Alice Karegi was evicted from the matrimonial home by their uncle Mwirigi M'buuri, the Petitioner herein. The Objectors were consequently taken by their mother to her brother Justus Kiambi, as their mother got married to one late Laban M'Kiara, where she still stays. OW1 stated she did not join her mother as according to Meru custom, she would not be accepted by her mother's husband as she was not his biological child. She stated that her late father had another brother apart from the Petitioner one Paul Kairingo, who is still alive. That her late father and her two uncles, she testified were living on one parcel of land at Abothuguchi/Katheri/1410, which land was registered in Objectors' father's name and which land the Petitioner is seeking to deprive the Objectors.

5. That when the Petitioner filed the petition he did not seek the Objectors' consent. She stated the land should be shared amongst the Objectors and their two uncles. She prayed to be a joint Administrator with the Petitioner. OW1 added that the land initially belonged to their father's father, but her father was solely registered, being the first born of the family to hold the land as joint owner and trustee for his brothers. That the Objectors uncles have been living on the land and are entitled to share of the land with the Objectors.

6. During the cross-examination OW1 testified that her sister is 46 years old. She stated that her mother was evicted in 1973 and reported to the retired Chief Justus Kiriria and the District Commissioner. She stated since their father died they did not work on the land. That she is married but her sister is not. That her maternal uncle blessed her wedding and dowry was paid to her mother, as she could not introduce her husband to her paternal uncles, due to bad relations. She stated her paternal grandfather is M'buuri who died before her father, who OW1 claimed she saw him during his life time.

7. **OW2 M'buuri M'marangu** testified that he comes from Kithumbi and was born in 1944 and he knew the deceased herein, as they were age-mates and born in the same area. He stated that the petitioner is brother to the deceased herein. That the eldest was Thurania (deceased). That the deceased had two brothers. That the other brother to the deceased is Paul Kairigo M'buuri and the deceased was the registered proprietor of the family land namely Abothuguihi/Katheri/1410 where the three brothers were residing during the life time of the deceased.

8. **OW2** testified that the deceased Thurania, herein was married to Karegi and were blessed with two children namely:-

(a) ***Catherine Kinya and***

(b) ***Mwendwa M'Thuranira***

and that the two Objectors are children of the deceased Thurania. That they had a house on the deceased's land and were chased away by Mwirigi the Petitioner and when he demolished the house and sold the material, is when the objectors moved to their uncles home and only one of them is married, the unmarried one he stated stays at Nanyuki.

9. During cross-examination OW2 testified that, the deceased was married in 1964 and by the time of his death the two daughters had been born. That Karegi was chased by Mwirigi but is now married elsewhere. That the Objectors were evicted when they were very small. That dowry to the 1st Objector was paid to her mother. On re-examination OW2 stated, the deceased's wife was chased by the Petitioner from the deceased's land.

10. **OW3 M'Linyiru M'buuri** testified that he comes from Katheri and is aged 66 years. That he knew the deceased herein, but could not recall the year of his death. He stated the deceased had another brother called Kairingo M'buuri. That the land at Abothuguchi/Katheri/1410 was registered in the name of the deceased where he used to stay with his two brothers. That the deceased had constructed on the land and married while on the said land. That he was blessed with two children namely Kinya and Kagwiria. That following his death the Petitioner evicted the Objectors and demolished their house. That the Objectors went to stay with their maternal uncle. He stated the Objectors have right to their father's share of land. During cross-examination OW3 testified that the deceased was his neighbour and both of them

were of same family. That OW2 is his brother. He stated that the three brothers are entitled to the disputed portion of land. That the deceased left his wife and two daughters on the suit land when he died. That the deceased's wife and children were chased by the petitioner. He stated he knew the land as it is occupied by the Petitioner and Kairingo. On re-examination he confirmed OW2 is not his brother but they come from the same clan.

11. **PW1, Mwirigi M'buuri**, the Petitioner testified that he comes from Katheri and that he does not know Catherine Kinya Thurania and Joy Mwendwa Thurania. He stated he knew the 1st Objector as Chief's wife of Katheri Central Location. He stated he does not know the 2nd Objector. He testified the estate subject of this case, is that of his late elder brother and the land indispute is Abothuguchi/Katheri/1410 which was the only land belonging to their family. He stated his only surviving brother is Paul Kairingo and their sister Salome Nkirote passed on.

12. That their brother now deceased was registered as a trustee as their father had disappeared unfortunately their registered brother died in 1968, by which time no burial permit used to be issued. On exhibit O1 showing the deceased died in 1971, PW1 stated the name therein is that of Thurania Buuri whereas his brother was called M'thuranira M'buuri. That his brother was a cook for whites, whereas the Objectors death certificate showed the deceased was a machine operator and died of stroke, whereas PW1's brother was murdered by having his neck cut. He further stated his brother was never married. He denied having demolished his brother's house and stated the Objectors never went to Petitioner's family, claiming they were daughters of their deceased brother. He added that their father returned home and stayed with them for 2 years before he died in 1970. That none of the Objectors was named after Petitioner's mother and none attended the burial of the Petitioner's mother or attended any family gathering or celebrations. The Petitioner stated their family was not involved in the marriage of any of the two Objectors. He Objected to the Objectors scheme of distribution urging that the Objectors are not entitled to the deceased's estate as they are not Petitioner's family members. He stated the Objectors' witnesses are their enemies who do not wish the Petitioner's family well.

13. During cross-examination PW1's testified that when his brother died he was 17 years old and further stated he does not have any documents to confirm his deceased brother's full names. He stated in the death certificate the letter "M" is lacking before each of the deceased names. PW1 stated his clan is Mberanya and that OW2 and OW3 come from the same clan. PW1 testified he has grudge with OW2 who denied to share political money with him. He stated the 2nd Objector is daughter of OW2. on cross-examination by Court PW1 stated that he came to know the mother of the Objectors in 1971 and that he does not know the father of the Objectors. On re-examination PW1 testified when his brother died his documents were not recovered.

14. **PW2 Paul Kairingo M'buuri** testified that PW1 is his elder brother. He stated he had nothing to add to what PW1 had stated. During cross-examination PW2 testified that when his brother died he was young and cannot know whether the Objectors were staying at their place with their mother and his late brother. He stated he had heard his brother had married from Katheri but does not know what became of his wife. He could not explain whether his brother had Children and that he does not know whether the Objectors are children of his deceased brother.

15. I have carefully considered the pleadings, the proceedings recorded before me (***rather than the typed ones which has some errors***), the counsel respective opposing submissions and the issues agreed upon by both counsel for consideration thus:-

(a) ***Whether the Objectors are daughters of the deceased?***

(b) ***Who between the Petitioner and the Objector should be the Administrator?***

16. The first issue for consideration is whether the Objectors are daughters of the deceased herein M'thuranira M'buuri? Let me start by stating that the burden of proof that the Objectors were daughters of the deceased M'thuranira M'buuri lied with the Objectors. The 1st Objector gave evidence on her behalf and that of the 2nd Objector. The Objector's did not produce any document such as notification of

births, or immunization card or identity card or Baptism card or school leaving certificate showing their relationship with the deceased, but instead opted to rely on their Oral evidence and that of their two witnesses. That such documented in my view would have showed the link between the Objectors and the deceased however in absence of documentary evidence the court can rely on oral evidence. OW2 and OW3 who gave evidence for the Objectors, are neighbours to the deceased and from the same clan with the deceased. Their evidence do support the Objectors on the material dates of deaths of the deceased. OW2 talked of the deaths being in 1970 though OW3 did not know when the deceased died. OW1's exhibit O1 showed that the deceased died on 15th May 1971 which supports evidence of OW2, The objectors witnesses gave the names of objectors and confirmed the 1st Objector carries one of the names of deceased and indeed the objectors were children of the deceased.

17. The evidence as to the date of death of M'thuranira M'Buuri as per Chief's letter is that he died in 1968. PW1 form P & A 80 indicates date of deaths as 1968, PW1 stated the death occurred in 1968. PW1 stated the cause of death of the deceased was as a result of murder as opposed to exhibit O1, which states the cause of death was a stroke. The place of deceased death according to the Objector's is Kianthumbi, Katheri whereas according to the petitioner it was at Oldoiga Farm, at Timau. The Petitioner testified the Objectors were strangers to their family as the deceased died a bachelor. He challenged the name in the death certificate exhibit O1 is not that of their brother because the name thereto is Thuriranja Buuri and not M'Thuranira M'buuri. He also stated his brother was a cook for whites as opposed to the deceased on exhibit O1 who is shown to have been a machine operator. The objectors testified that PW1 demolished the deceased's house after having chased the Objectors. The matter was taken to area Chief and District Commissioner. The Petitioner did not give document to support his assertion nor did he call any witnesses. Their evidence is contradictory as PW2 in his evidence did not deny their deceased brother was not married nor did he deny the objectors were daughters of his dead brother. The Petitioner's assertion that the Objectors since they became adults did not participate in the family meetings, gatherings or their celebration and ceremonies and that when OW1 was getting married she never introduced her husband to the family of the deceased nor cause dowry to be paid to deceased's family but to her mother is no basis for denying that they are their brother's daughter given the evidence of the objectors' and their witnesses O2 and O3 on how the petitioner chased them from their father's home, demolished their house and chased them away with their mother. All the Objectors actions or omissions reflect to one thing that there had been no good relations between the Objectors and the family of their deceased father. I therefore from the evidence adduced by the Objectors and their witnesses find that the objectors were daughters of the petitioner's deceased brother.

18. Significantly this cause is concerned with who are entitled to the deceased's estate. The deceased died before the **Law of Succession Act (Cap 160)** came into force on 1st July 1981. **Section 2 (2) of the Law of Succession Act** provides:-

***“The estate of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”***

19. The Law that applies to the deceased's estate herein whether one takes the date of death as 1968 or 1971 is supposedly the **Meru Customary Law** which was Patrilineal before the **Law of Succession Act** came into force and before promulgation of the **New Constitution of Kenya 2010**. The Petitioner's counsel in his submission submitted under the **Meru Customary Law** as then, it was the sons and men who were entitled to inherit the deceased who died before 1st July 1981, Well, I need not say further as regards the law applicable in view of the fact this is not one of the issues agreed for my determination and in view the constitutional pronouncements on application of customary law. I will leave that issue for another day before another Judge.

20. The last issue is who between the Petitioner and the Objector should be the administrator? The 1st Objector sought to be made a joint Administrator with the Petitioner upon being found to be a daughter of the deceased. I have fortunately held that the Objectors, have proved on balance of probabilities that they are daughters of the deceased, meaning they are beneficiaries and/or dependants to the deceased's estate. I therefore hold in such findings it is prudent to let the Petitioner and the 1st object Catherine

Kinya Thurania proceed to jointly administer the deceased's estate herein. This matter being a serious matter concerning inheritance, the 1st Objector is at liberty to move the court appropriately should the petitioner fail to cooperate but apply for letters in joint names with the petitioner.

21. In view of the above, I make the following orders:-

**(a) The Objectors herein are daughters of the deceased M'thuria M'buuri**

**(b) The 1st Objector Catherine Kinya Thurania and the Petitioner Mwirigi M'buuri are jointly appointed administrators to the deceased's estate herein and temporary grant of letters of administration do forthwith issue to the two namely Catherine Kinya Thurania and Mwirigi M'buuri.**

**(c) That as this is an old matter parties or any of them are granted leave to apply for confirmation of grant without having to wait for expiry of 6 months period from said day.**

**(d) Each party to bear its own cost.**

**DATED AND SIGNED THIS ..... DAY OF ..... 2016.**

**J. A. MAKAU**

**JUDGE**

**DELIVERED IN OPEN COURT AT MERU THIS 19<sup>TH</sup> DAY OF APRIL , 2016.**

In the presence of:

Mr. Mburugu for Objector

Mr. Gichunge for the Petitioner

**By FRANCIS GIKONYO**

**On behalf of**

**J. A. MAKAU**

**JUDGE**