



## SUCCESSION

- Dispute amongst the beneficiaries on the exact location of each of their entitlement on the deceased's estate.

### REPUBLIC OF KENYA

### IN THE HIGH COURT OF KENYA

### AT MERU

### SUCCESSION CAUSE NO. 154 OF 1998

### IN THE MATTER OF THE ESTATE OF M'MUKINDIA M'ARACHI (DECEASED)

CHARLES KINOTI M'MUKINDIA.....APPLICANT

VERSUS

GEORGE KITHINJI MUKINDIA & OTH.....RESPONDENTS

### RULING

I had some difficulty in understanding the objection raised by Charles Kinoti M'Mukindia (Kinoti) to the application dated 27<sup>th</sup> May 2010 filed by George Kithinji M'Mukindia (Kithinji). The surviving beneficiaries of this estate are three brothers, namely, Kinoti, Kithinji and Gerald Muthaura M'Mukindia. By a judgment of this court dated 7<sup>th</sup> May 2010 the court ordered that the parcel number *Ntima/Igoki/1327* be shared equally between the three brothers. The difficulty now seems to be the determination of where each of the three brothers should locate their parcel. By the application dated 27<sup>th</sup> May 2010 Kithinji seeks the court to order that the land reference, *Ntima/Igoki/1327* be shared by each of the beneficiaries keeping to their earlier allocated portion pursuant to earlier sub division of the deceased land. He further prayed that the court will order that the portion that had been held by their late mother for her lifetime be shared equally amongst the brothers. It should be noted that this court by its judgment dated 25<sup>th</sup> July 2002 ordered the land to be sub divided into four equal portions whereby the three

brothers, the sons of the deceased, were to get their portions and their mother who is now deceased was to hold her portion for her lifetime. The court in giving their late mother a life interest on her portion did not appoint a remainder man who was to inherit her portion. It is because of the conflict that arose on how her portion was to be sub divided that this court wrote the judgment of 7<sup>th</sup> May 2010. By that judgment, it was ordered that her portion be divided equally amongst the three sons. Kithinji in his affidavit in support of the application dated 7<sup>th</sup> May 2010 annexed an agreement whereby the three sons of the deceased agreed where each of them was to occupy parcel number 1327. In that written agreement, the three beneficiaries of this estate on agreeing where each was to occupy also agreed that within a given time frame, the beneficiaries would remove their properties that had fallen on the portion given to the other beneficiaries. Kithinji deponed that as a result of that agreement which was signed by the three beneficiaries in the presence of six witnesses, the three beneficiaries proceeded to develop their portions. He then stated that if those developments were not taken into account in the subdivision the beneficiaries would suffer loss of their development. I began this ruling by saying that I had difficulty understanding the opposition of Kinoti to the present application. This is because Kinoti in his replying affidavit dated 13<sup>th</sup> September 2010 stated that if the mode of distribution suggested by Kithinji was followed his house would be affected by the sub divisions. In that regard he deponed:-

***“That the allegation of the petitioner is meant to delay this long standing dispute and is likely to alter the whole dispute as my permanent house will be taken away from me.”***

That deposition is contrary to the spirit of the application subject of this ruling. What I understand Kithinji to be seeking is an order that the sub division of the land amongst the beneficiaries should take into account their respective development. I have looked at the annexures attached to the affidavit of Kithinji and I find that the developments made by the beneficiaries on the portions of land they occupy are in some instances permanent in nature. It is for that reason I find that the application is merited. I grant the following orders:-

- 1. The judgment of this court dated 7<sup>th</sup> May 2010 ordering that parcel number Ntima/Igoki/1327 be shared equally between Charles Kinoti M’Mukindia, George Kithinji M’Mukindia and Gerald Muthaura M’Mukindia be put into effect by allocating each of those beneficiaries to get a share of land where each has carried out their development and further by sub dividing the portion that was held by the deceased wife equally amongst the three beneficiaries. This exercise shall be undertaken in the presence of the sub area who was one of the witnesses of the agreement between the beneficiaries on how they were to occupy the land.***
- 2. There shall be no orders as to costs.***

***Dated, signed and delivered at Meru this 17<sup>th</sup> day of February 2011.***

**MARY KASANGO  
JUDGE**