



## SUCCESSION

### • Distribution.

## REPUBLIC OF KENYA

### IN THE HIGH COURT OF KENYA AT MERU

### HIGH COURT SUCCESSION CAUSE NO. 195 OF 2003

### IN THE MATTER OF THE ESTATE OF THE LATE IKUNGA RARIA (DECEASED)

M'ITUNGA M'IKIUNGA.....PETITIONER

VERSUS

M'RIMBERIA M'IKIUNGA.....OBJECTOR

### JUDGMENT

The grant issued to the petitioner M'Itunga M'Ikiunga was revoked by this court's ruling of 19<sup>th</sup> December 2008. In revoking that grant, the court found that the petitioner had made false statement in his petition. He had described himself as the only surviving child of the deceased. He stated in his petition that his other two sisters were deceased. The court by its ruling of 19<sup>th</sup> December 2008 found that the deceased was survived by 8 children. The only property of this estate is parcel No. *Kiirua/Ruiri/Kithiru*. The court in hearing the application for a revocation of the grant received *viva voce* evidence. The evidence adduced before the court during that hearing was that all the deceased sons who included the petitioner had other parcels of land the court by its aforesaid ruling stated as follows:-

***“What clearly emerges is that the sons of M'Ikiunga M'Raria were in 1965 and after, beneficiaries of government settlement in large tracks of land. Raria himself was the beneficiary of Kiirua/Ruiri/300 which the petitioner seeks to appropriate to himself in this cause.”***

That finding of the court has not been challenged in an appeal. I am therefore bound by that finding. The court on revoking the grant issued to the petitioner ordered that a fresh grant be issued in the joint names of M'Itunga and M'Rimberia. Thereafter, the court invited the beneficiaries to file written submissions on the mode of distribution of this estate. It is the distribution of this estate which now falls on my hands to decide upon. The written submissions were filed by the petitioner where he submitted that the deceased had in his lifetime given the other beneficiaries his brothers land in his lifetime. He therefore sought that parcel No. 330 be wholly given to him. That argument was rejected by this court in its ruling dated 19<sup>th</sup> December 2008 as quoted above. The other beneficiaries state that the sons of the deceased have built houses on parcel No. 330 and therefore sought it be distributed equally between them and such distribution do take into account of where each has constructed their houses. That mode of distribution that is, dividing the parcel equally amongst the beneficiaries is the one that this court will adopt. The court will adopt it because it is bound by the finding of this court by its ruling of 19<sup>th</sup> December 2008 which found that none of the beneficiaries obtained any benefit from the deceased in his lifetime. It is for that reason that I give the following orders in this judgment:-

1. ***An order of rectification is hereby issued rectifying the registration of parcel No. Kiirua/Ruiri/330 by canceling the name of M'Itunga M'Kiunga and by registering the said plot in the name of Ikiunga Raria deceased.***
2. ***The restriction placed on parcel No. Kiirua/Ruiri/330 is hereby lifted.***
3. ***The grant issued in the joint names of M'Itunga M'Ikiunga and Rimbere M'Ikiunga is hereby confirmed to the effect that parcel No. Kiirua/Ruiri/330 be shared equally between the following beneficiaries:-***
  - i) ***Francis M'Itunga M'Ikiunga***
  - ii) ***M'Rimbere M'Ikiunga***
  - iii) ***Gerevasio Mbogori M'Ikiunga***
  - iv) ***M'Ethira M'Ikiunga***
  - v) ***M'Mukira M'Ikiunga***
4. ***Such sharing of that parcel of land amongst the beneficiaries as stated above shall take into account where each beneficiary has occupied and developed.***
5. ***There shall be costs for the objectors to be paid by M'Itunga M'Ikiunga.***
6. ***This judgment shall be transmitted to the High Court at Nairobi Family Division to be placed in the file High Court Succession Cause No. 57 of 2005 which succession also related to the deceased herein and to his property Kiirua/Ruiri/330.***

***Judgment by:-***

**MARY KASANGO  
JUDGE**

***Dated, signed and delivered at Meru this 29<sup>th</sup> day of September 2011 by:-***

**J. LESIIT  
JUDGE**