

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU Succession Cause 298 of 1996

STANLEY M'MUGWIKI M'BAICHU PETITIONER
VERSUS
JOHN GITONGA M'KIRERA OBJECTOR

JUDGMENT

Stanley M'Mugwika Mbachu (Stanley) petitioned for letters of administration intestate in respect of this estate. He described himself as the cousin of the deceased. In evidence it was stated that the deceased father and the petitioner's father were sons of Nguchienda. The objector John Gitonga Kirera (Gitonga) in raising his objection stated that the deceased had left a written will. Stanley's evidence and that of his witnesses was to the effect that he is the closest surviving relative of the deceased. That although he had moved to Ol-Jororoko he often visited the deceased who in his lifetime was unmarried and had no children. That Stanley took care of all the needs of the deceased. In that regard, he sent food for the deceased and when the deceased was unwell he took him to hospital. The deceased was said to have been advanced in his age. Stanley stated that his son live with the deceased alongside with Gitonga. However, his son had passed away. Gitonga's evidence was that he was adopted by the deceased. He however did not give independent evidence to prove the same. He said that he lived with the deceased and was very trusted by him and to prove the same he produced evidence over joint account that they held together at Barclays Bank. He further stated that the deceased had left a written will. He called an advocate called Nyaga Kamundi who drew the deceased will and interpreted it to the deceased in the Kimeru language. Kamundi Advocate said that he and his clerk witnessed the deceased signature of the will. The evidence of Kamundi Advocate was unshaken even though there was revelation that he and Gitonga were at one time classmates. That revelation did not in any way reduce the weight of his evidence. Indeed it was Kamundi Advocate that disclosed that relationship with Gitonga. If indeed there was anything sinister in that relationship, and bearing in mind that he was the one that drew and witnessed the signing of the will by the deceased, then in my view, he would not have made that disclosure. In evidence, Kamundi Advocate stated that he could not recall who accompanied the deceased to his office when he drew the will. As I received the evidence of Kamundi Advocate, I formed the opinion that he was a truthful witness. I believed him. For that reason, it is the finding of this court that the deceased died testate having left behind a written will. The deceased left that will giving parcel number *Kibirichia/Ntumburi/270* to Gitonga. The fact that Stanley was of greater degree of consanguinity does not deter this court from that finding. That being the finding of this court I order as follows:-

1. *That letters of administration with will which is annexed to the cross petition of John Gitonga Kirera dated and filed on 21st April 1996 be issued forthwith.*
2. *That the said grant be confirmed to the effect that parcel number *Kibirichia/Ntumburi/270* and all other moveable property of the deceased do go to John Gitonga Kirera absolutely.*
3. *There shall be no orders as to costs.*

Dated and delivered at Meru this 28th day of May 2010.

MARY KASANGO
JUDGE