



**SUCCESSION**

- Distributio

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**SUCC. CAUSE NO. 239 OF 2005**

**IN THE MATTER OF THE ESTATE OF THE L ATE**  
**M'MUGAMBI BAIGUAMBA (DECEASED)**

**M'MURITHI M'MUGAMBI ..... PETITIONER**

**VERSUS**

**HARRIET KINYA ..... OBJECTOR**

**JUDGMENT**

A grant was issued in this matter in the joint names of M'Murithi M'Mugambi and Harriet Kinya. This estate has only one property namely, *Ntima/Ntakira/1100*. Both the administrators have agreed to share that property equally. The bone of contention is how the land shall be shared between them. M'Murithi in evidence stated that the parcel of land is too narrow to be divided in horizontal direction. The land, he said, has one side bordering the road and the lower side bordering a river. That before the death of his brother Marete, that is, the late husband of Harriet, elders had come on to the land and had divided the land as shown in an exhibit in this case. They divided the land vertically. That division left one portion on the upper side bordering the road and the other portion on the lower side boarding the river. According to M'Murithi, those elders allocated the upper part to him and the lower part to Marete. He therefore seeks that this court will distribute the upper part to him and the lower part to

Harriet. He called two witnesses who confirmed that the land was subdivided by the elders and the allocation as stated by M'Murithi was made. They also confirmed that the division was acceptable to Marete. Harriet contradicted their evidence in regard to the statement that Marete was agreeable. She said that he was not agreeable and she too was not agreeable. She said that from the time she got married to Marete in 1964, she had always lived on the upper part of the land. That her home and the home of M'Murithi were both on the upper part of that land. She said the lower part of that land is sloppy and not suitable for development. Further, that one did not have access to the road. In this regard, M'Murithi said that a road had been provided running horizontally on the side of the two portions from the lower part up to the road. Harriet called a sister of M'Murithi as a witness. She too was not agreeable to the allocation suggested by M'Murithi. She said that the lower part of that land which is next to a river gets flooded during the rainy season. That latter statement by the sister of M'Murithi was not responded to by M'Murithi or his witnesses. I will therefore accept it as truth that the lower part of the deceased property gets affected by rain to the extent that it gets flooded. Further no evidence produced from surveyor to say the unsuitability of dividing the land horizontally. Bearing the evidence adduced before me, and doing the best that I can, I find that it would cause great hardship to have one of the beneficiaries get lower, sloppy and flood prone part whilst the other gets the well leveled area on the upper part which has direct road access. I therefore order as follows:-

- 1. That a grant to be confirmed to the effect that parcel number Ntima/Ntakira/1100 be shared equally between M'Murithi M'Mugambi and Harriet Kinya.***
- 2. The two equal shares shall be divided horizontally from the tarmac road to the river.***
- 3. There shall be no orders as to costs.***

Dated and delivered at Meru this 2<sup>nd</sup> day of September 2010.

**MARY KASANGO**

# **JUDGE**