



SUCCESSION

Ø Distribution.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT M ERU
SUCCESSION CAUSE NO. 121 OF 1998

IN THE MATTER OF THE ESTATE OF M'KIRIGIA M'MURURU ALIAS M'RIMBERIA M'MURURU (DECEASED)

JANET KATHURE M'KIRIGIA PETITIONER

VERSUS

GEREMANO SAMAKI M'ARITHI OBJECTOR
MOSES KINOTI MURIUNGI PROTESTOR

JUDGMENT

Janet Kathure M'Kirigia petitioned for grant of letters of administration intestate in respect of her deceased husband whom she stated was known as M'Kirigia M'Mururu *alias* M'Rimberia M'Mururu. In the petition, she listed herself and her children as the beneficiaries of the deceased estate. She listed the assets of the estate as *Ntima/Igoki/1704, Ntima/Igoki/276 and L.R. Kiiroa/Kiiroa/304*. An objection was raised to that petition by Geremano Samaki M'Arithi. Geremano deponed that the petitioner's husband was called M'Kirigia M'Mururu. He further stated that parcel number *Ntima/Igoki/276* belonged to his grandfather known as M'Rimberia M'Mururu and did not belong to M'Kirigia M'Mururu, the husband of the petitioner. Geremano said that M'Kirigia was his uncle. Evidence was received in respect of that dispute. Kathure the petitioner stated that the name reflected in the national identity card of her late husband was M'Kirigia M'Mururu. However, following his death, she found that parcel number 276 was in the name of M'Rimberia M'Mururu. At one time she said that her husband was called Isaiah M'Kirigia and also known as M'Kirigia M'Mururu. When she was cross examined she said that when she got married to M'Kirigia they lived on parcel number 276. That parcel of land was also occupied by her father-in-law M'Rimberia M'Mururu and his wife. She however insisted that parcel number 276 belonged to M'Kirigia. PW2 in evidence stated that parcel number 276 belonged to M'Kirigia. He however failed to explain why then that parcel was registered in the name of M'Rimberia M'Mururu. He however said that M'Kirigia was also called M'Rimberia. PW3 stated that parcel number 276 originally belonged to M'Kirigia's father called M'Mururu who was also Geremano's grandfather. Geremano in evidence stated that his protest in this succession cause related to the distribution of parcel number 276 as proposed by Kathure. He stated that that land was in the name of M'Rimberia M'Mururu who was the father to his father hence his grandfather. He further stated that M'Kirigia was a brother to his father. He further stated Kathure and her children had never lived on parcel number 276. He suggested that parcel number 276 be shared equally between him and Kathure. He said that he had no claim over the rest of the estate of M'Kirigia, deceased. DW2, Moses Kinoti Muriungi stated that his late father Francis Muriungi Mboroki, deceased, lived on that parcel of land. Kinoti said that he was born on that parcel in 1971. Since then, he had lived on that parcel of land and in all that time he had not seen Kathure on that land. He requested that he be given a portion of the land because he did not have anywhere else to go. He described Geremano "like his uncle."

I have considered the evidence submitted by the parties and the submissions of counsels. The main issue to be determined is whether the deceased was known by both the names of M'Kirigia M'Mururu and M'Rimberia M'Mururu. PW1 Kathure was categorical that he was called M'Kirigia M'Mururu. She said that it was after his death that she found parcel number 276 was in the name of

M'Rimberia M'Mururu. It is as a result of that discovery that she indicated the *alias* name of the deceased in this succession. The evidence that Kathure has never occupied parcel number 276 was not challenged in cross-examination. Even Kathure herself said that it was her father-in-law M'Rimberia M'Mururu and his wife who occupied the parcel of land. The evidence which I can discern from the filed affidavit show that M'Rimberia M'Mururu died in the 1940s. Even Kathure's own witness PW3 said that parcel number 276 belonged to the father of M'Kirigia M'Mururu. M'Rimberia M'Mururu, he said, was the father of M'Kirigia and Geremano's father. It is on that basis that Geremano now claims a right to inherit part of that land. Evidence was also adduced that Geremano has built a house on that parcel of land. Moses Kinoti's evidence was that his family had lived on that parcel of land for considerable time. On the death of his father Mboroki, he was buried on that land. His evidence also was not challenged. I find that he is entitled to a share of that parcel of land. In the end, I make a finding that the parcel of land should be inherited by Geremano, Kinoti and Kathure. The judgment of the court is as follows:-

1. *It is ordered that the grant issued to Janet Kathure M'Kirigia be and is hereby revoked. A fresh grant shall be issued in the joint names of Janet Kathure M'Kirigia and Geremano Samaki M'Arithi.*
2. *That grant shall be confirmed in the following terms:-*
 - (a) *Parcel number Ntima/Igoki/276 to be shared equally between Geremano Samaki M'Arithi, Moses Kinoti Muriungi and Janet Kathure M'Kirigia.*
 - (b) *Parcel number Ntima/Igoki/1704 to be registered in the name of Joseph Mutaniki M'Kirigia absolutely.*
 - (c) *L.R. number Kiirua/Kiirua/304 to be shared as follows:-*
 - (i) *Jane Kathure M'Kirigia – 0.83 of an acre*
 - (ii) *Doris Kiende M'Kirigia – Quarter of an acre*
 - (iii) *Sebastian Ntara Kirigia – 0.83 of an acre*
 - (iv) *Julius Kiambi Kirigia – 0.83 of an acre*
 - (v) *Silas Mutuma – Quarter of an acre*
3. *Leave is hereby granted to the Deputy Registrar of this court to sign documents on behalf of any administrator who fails to sign such documents in order to put into effect the judgment of the court.*
4. *There shall be no orders as to costs.*

Dated and delivered at Meru this 22nd October 2010.

MARY KASANGO
JUDGE