



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 424 of 2004

KITHUKA M'MUGUONGO.....PETITIONER

VERSUS

RONALD KIRIANKI MUGUONGO.....APPLICANT

RULING

The dispute here involves distribution of the estate of the deceased person in this cause. The deceased left two parcels of land, Njia/Burieruri/431 measuring approximately 0.27 acres and Njia/Burieruri/2449 measuring approximately 3.95 acres.

The deceased was survived by 4 sons;

- (i) Ronald Kirianki Muguongo
- (ii) Kithuka M'Muguongo Thoa
- (iii) Kirema M'Muguongo, and
- (iv) Mutuma M'Muguongo

Ronald and Kithuka are the co-administrators of the estate. Both have filed affidavits on the distribution which are at variance, hence this ruling.

Ronald's proposal is as follows;

- (1). Njia/Burieruri/431 to Kithuka(whole) = 0.27 acres
- (2) Njia/Burieruri/2449
 - Mutuma – 1 acre
 - Kirema – 1 acre
 - Ronald – 1.95 acres

Kithuka has opposed this proposal arguing that the deceased had given Ronald two parcels of land, being Njia/Burieruri/3024 measuring 1.48 acres and Njia/Burieruri/1256 measuring 0.25 acres which Ronald

sold, on 9th January, 2003 to Arnold Mung'athia Alaine.

Ronald in a supplementary affidavit has challenged these averments maintaining that the parcels are his and not inherited from the deceased. I have considered these averments.

As a general rule all the four sons of the deceased are entitled to equal share of the estate. It is therefore improper for Ronald to insist that while Mutuma(deceased) and Kirema get 1 acre each and he gets 1.95 acres, Kithuka should only get the portion occupied by him, measuring 0.27 acres. That is unconscionable. Kithuka on the other hand has not satisfied me that the deceased passed to Ronald parcel Nos.3024 and 1256. The green cards annexed not only confirm that Ronald is the registered proprietor of 3024 but was also the registered proprietor of 1256 before he transferred it. While Kithuka has no issue with the proposed distribution of 1 acre each to Mutuma and Kirema, he suggests that Ronald should get 0.35 of parcel No.2449 while he (Kithuka) gets the whole of No.431 and 1.6 acres of No.2449. This again is not equitable. The trouble is between Kithuka and Ronald.

It is now ordered that the estate shall be distributed as follows;

(i) Kithuka:

(a) Njia/Burieruri/431(whole) = 0.27

(b) Njia/Burieruri/2449 = 0.78 acres

(ii) Mutuma:

Njia/Burieruri/2449 = 1.05 acres

(iii) Kirema:

Njia/Burieruri/2449= 1.05 acres

(iv) Ronald:

Njia/Burieruri/2449 = 1.05 acres

The joint administrators to set in motion the process of survey and registration immediately. Each party to meet own costs.

Orders accordingly.

DATED AND DELIVERED AT MERU THIS 20TH DAY OF JULY, 2007

W. OUKO

JUDGE