



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**IN NAIROBI**

**(CORAM: KWACH, SHAH & OWUOR J.J.A)**  
**CIVIL APPEAL (APPLICATION) NO. 60 OF 1995**  
**BETWEEN**

The deceased ZAKAYO MUTIGA died in 1980. He died intestate and left the following parcels of land under his name:-  
ABOGETA/KITHANGARI/271 Measuring 2.31 Ha.  
ABOGETA/KITHANGARI/331 Measuring 0.25 Ha.  
ABOGETA/KITHANGARI/541 Measuring 1.94 Ha.

The Petitioner and the objector are the only surviving sons of the deceased. The two heirs differed as to the mode of distribution of the estate hence this objection proceeds.

It was the objectors case that the estate of his deceased father which is comprised of the three parcels of land as stated above should be distributed equally between him and the Petitioner being the only surviving sons of the deceased while the Petitioner submitted that he objector is not entitled to any share since him and the deceased had assisted in financially to purchase land parcel NO.ABOGETA/KITHANGARI/261 where he now resides with his family. This was way back in 1966 and which fact is denied by the objector who said that he had purchased the same with his own funds. The petitioner concedes that land parcels No.

ABOGETA/KITHANGARE/541 can be shared equally between hiseldest son KAARIA MORFORT and the eldest son of the objector ASHFORD MUTWIRI but land parcel No.ABOGETA/KITHANGARE/331 should be registered in his name because his deceased father had sold it and he paid off the purchaser to retrieve the same.

The evidence adduced by the petitioner has not proved that him and the deceased had in any way assisted the objector to purchase land parcel No.ABOGETA/KITHANGARE/261 in 1966.

Having made such a finding and the deceased having died intestate, section 38 of the Laws of Succession Act Cap 160 comes into play. The Petitioner and the objector being the only surviving children of the intestate deceased, the estate shall devolve upon them and shall be equally divided among them except land parcel

No.ABOGETA/KITHANGARE/331 measuring 0.25 Ha which the Petitioner had retrieved from a purchase. That is to say the land parcel No.ABOGETA/KITHANGARE/271 and No.ABOGETA/KITHANGARE/541 shall be shared between the petitioner and the objector equally.

These are the orders of this court. Dated this 22nd day of June, 2000

**J.L.A. OSIEMO**

**JUDGE**