



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

SUCCESSION CAUSE NO. 158 OF 2000

IN THE MATTER OF THE ESTATE OF KOMERI MASINDE MUPUNGUSIA-DECEASED

JAPHETHER WASIKE KOMERI.....PETITIONER

VERSUS

RICHARD MALOBA KOMERI.....1ST APPLICANT

JOHNSTONE KHAEMBA MASINDE.....2ND APPLICANT

ROWELLY NYONGESA WAFULA.....3RD APPLICANT

JUDGEMENT

Komeri Masinde Mupungusia died on 1/1/1973 leaving behind 5 widows and several children. He was the registered owner of the parcel of land known as E. Bukusu/W. Sanga'alo/96.

Japhether Wasike Komeri petitioned the honourable court for a grant of letter of administration intestate and a grant was issued on 10th September, 2003. Subsequently, an objection to the making of a grant was filed by the applicants.

By the orders of this court issued on 11/6/09, the 1st objector/applicant was made a co-administrator alongside the petitioner and the matter confirmed on 8/3/2012.

Parties agreed by consent narrowed down the issues to be determined by the court to; whether the petitioner is entitled to a parcel of land approximately 0.17 Ha out of East Bungoma/West Sang'alo/96.

The court issued directions on 12/7/2012 that the matter proceeds by way of *viva voce* evidence. Pursuant thereto, parties filed their written statements and subsequently adopted them in evidence in chief.

PW1, Richard Maloba Komeri stated that the petitioner had not been allocated the portion of land in E. Bukusu/W. Sang'alo/96 as alleged. That their late father had built a canteen in 1972 and died in 1973 before he could take possession. That the petitioner later demolished the mud shop and built a permanent one.

DW2 was David Wekesa Komeri. He stated that he has portion of land in E. Bukusu/W. Sang'alo/96 and bought 1 extra Acre from Richard Maloba who was then moving out. That the deceased had set aside approximately Half an Acre for his business, the portion was left to the widows and not given to Japhether.

PW3 Johnstone Khaemba Masinde stated that he is the deceased's son. He lived with the petitioner in land E. Bukusu/W. Sang'alo/113 until in 1974 when he was allocated a portion of land in E. Bukusu/W. Sanga'lo/ 96 by the petitioner who the blocked him from growing his food crop in the former parcel.

The petitioner by the time of testifying had died and was substituted by his son Samuel Wafula Wasike who testified as DW1. He stated that his father was given the portion by his grandfather around 1970's wherein he sought permission from the county council to erect a shop which became operational in 1972. The clan later sat in 1974 and allocated portion amongst his brothers. He stated that he retained the portion that had been given to him by his father prior to his demise.

He further stated that his brother one Richard Maloba Komeri sold his portion of the land and bought another land in Ndalu.

DW2 Peter Machimbo Komeri, a brother to the petitioner stated that he was 1 year when the deceased died and the petitioner took the responsibility of taking care of them. He stated that the dispute was only about the plot which belonged to Japheth who was given by their father before he died.

In the submissions, the applicant urges the court to find that the petitioner lives in another parcel of land known as E. Bukusu/West Sang'alo/113. The petitioner on the other hand urges the court to find that he lives in East Bungoma/West Sanga'lo/96.

According to P & A 5 filed by the petitioner in court on 7th November, 2000, the only asset of the estate listed is E. Bukusu/West Sang'alo/96. The surveyor's report dated 14th December, 2012 indicates that the petitioner occupies a portion measuring 0.17 Ha.

From the evidence and submissions, it is clear that the following are admitted and/or not in dispute.

1. That the deceased Komeri Masinde Mapungusia died on 1/1/1973 aged 65 years.
2. That at the time of death, the only asset he had in his name was E. Bukusu/W. Sangalo/96.
3. That the deceased had 5 wives and 15 sons. Each of the sons has been provided for as per the surveyor's report dated 14/12/2011.
4. That some of the beneficiaries have sold off their portions and moved elsewhere.
5. That the only parcel of land in contention is the ½ Acre where the deceased had built a kiosk.
6. That the petitioner moved into his parcel in 1970 and obtained authorization to build a shop.
7. That Japhether demolished the mud kiosk started building the shop in the year 1970.
8. That since 1970, he has been occupying the kiosk and has not been provided for in parcel No. 96.
9. That there is no evidence that land parcel E. Bukusu/W. Sang'alo/113 was owned by the deceased.

From the evidence and the submissions, I am satisfied that Japhether built on the plot E. Nukusu/ W. Sang'alo/96 during the lifetime of the deceased with his consent and that as the deceased had given all his other beneficiaries their acreage including Japhether, this court finds that the ½ Acre rightfully belongs to Japhether and or his estate as he is now deceased. The same to be transferred to the estate of Japhether Wasike Komeri.

Each party to bear his own costs.

DATED AT BUNGOMA THIS 16TH DAY OF NOVEMBER, 2021

S. N. RIECHI

JUDGE