



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 666 OF 2013

IN THE MATTER OF THE ESTATE OF M'AGIRI BAIKWINGWA Alias AGIRI BAIKWINGA (DECEASED)

HENRY NKOBU M'AGIRI.....PETITIONER

VERSUS

JOSEPHINE KAJUJU NKOBU.....OBJECTOR

R U L I N G

1. The deceased herein died on 5th June 1987 and left behind *M'Marete M'Agiri* (now deceased) and **Henry Nkobu M'Agiri** as his dependents. He also left behind the property known as **L.R.No. Ntima/Igoki/1** as his estate.

2. On 13th December, 2018, this court made a determination that distributed the estate as follows: -

Ntima/Igoki/1

- a) Henry Nkobu M' Magiri - 0.91 ha
- b) Josephat Kinoti Mwiricha - 0.455 ha
- c) Josephine Kajuju Nkobu - 0.455 ha

3. By his application dated 21st January, 2019, the petitioner has sought that the said ruling be reviewed on the ground that, the said ruling left out **Robert Kirimi Meme** from the distribution of the estate. That he should have been included in the distribution as his late father had purchased from the deceased in 1985 a portion measuring 105ft by 50ft out of the estate property and his family has to date lived on that portion. He produced a Sale Agreement dated 15th June, 1985 in support of that contention.

4. The application was responded to by the objector who averred that the deceased only sold 35ft by 35ft to **Robert Kirimi Meme** and that it is only that portion that the said **Robert Kirimi Meme** was entitled to. She averred that the agreement relied on was suspicious as it had alterations and that the physical space occupied by **Robert Kirimi Meme** does not amount to 105ft by 50 ft.

5. With leave of court, the petitioner filed a further affidavit on 22nd February, 2019 whereby he explained that he had been advised by a surveyor that the area of 150ft by 105ft sold by the deceased as aforesaid, is equivalent to 0.36 acres.

6. It is clear from the record that the said **Robert Kirimi Meme** had been listed in the application for confirmation as a beneficiary entitled to 105ft by 150ft. The reason why he was left out from the distribution of 13th December, 2018 was because the basis for his inclusion was not disclosed to court. Indeed the objector did not then object to his inclusion. Her objection was basically that she had been left out in the then proposed distribution.

7. I have seen the Sale Agreement that was annexed to the application. It is dated 15th June, 1987. It is properly executed and countersigned wherever there is alteration contrary to the objector's assertions. The agreement shows that the deceased sold to the late father of **Robert Kirimi Meme**, an area of 105ft by 150ft and not 35ft by 35ft as suggested by the objector.

8. It is not denied that after the said sale and purchase of the portion alluded to, the family of **Robert Kirimi Meme** took possession thereof and has been in occupation thereof for over 33 years. Surely, even if that sale agreement was unenforceable under the Contract Act, a claim under Limitation of Actions Act (adverse possession) would suffice.

9. In the circumstances, can this court hold its hands and send the parties to the Environment and Land Court as suggested by the objector in light of her admissions as to the purchase and occupation? I think not. That will be completely unconstitutional as it will not only lead to unnecessary costs, but it will also be delaying justice in breach of **Article 159 of the Constitution of Kenya**.

10. Indeed, the objector had in her protest dated 6th November 2018 admitted that **Robert Kirimi Meme** should benefit from $\frac{1}{4}$ an acre of the deceased estate. It is therefore spurious for her now to turn around and; firstly, deny that **Robert Kirimi Meme** is not entitled to anything and secondly, state that if he is entitled to any portion, the same be restricted to an area of 35ft by 35ft.

11. In the circumstances, I allow the application. The ruling dated 13th December, 2018 is hereby reviewed and the estate is to be distributed as follows: -

Ntima/Igoki/1

a) Henry Nkobu M'Magiri - 0.837 ha

b) Josephat Kinoti Mwirichia - 0.418 ha

c) Josephine Kajuju Nkobu - 0.418 ha

d) Robert Kirimi Meme - 0.146 ha

12. There will be no order as to costs.

DATED and DELIVERED at Meru this 7th day of March, 2019.

A. MABEYA

JUDGE