



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE 368 OF 2011**

**IN THE MATTER OF THE ESTATE OF M'LIMBIINE M'MAUTA ALIAS M'LIMBINE M'MAUTA (DECEASED)**

**PETER MUKARIA.....APPLICANT/PETITIONER**

**VERSUS**

**IBRAHIM M'IKIAO.....1<sup>ST</sup> OBJECTOR**

**IBRAHIM KANGENTU.....2<sup>ND</sup> OBJECTOR**

**RULING**

The deceased herein M'Limbine M'Mauta died intestate on 14<sup>th</sup> September 1989 and left behind a son Peter Mukaria Limbine and Joseph Meeme M'Limbine, now deceased and survived by the wife Julia Gateti M'Mauta. The assets listed as forming part of the estate are:

1. Ithima/Antuambui/219 which was subdivided into 7135,7136,7137,7138 and 7139
2. Ithima/Antuambui/2707

From the judgment in Meru CMC CC No. 231 of 2005 delivered on 1<sup>st</sup> December 2017 it appears that Joseph Meeme Limbine the son of the deceased fraudulently subdivided LR No. Ithima/Antuambui/219 before obtaining Letters of Administration and sold out the resultant subdivisions LR. Ithima/Antuambui/ 7137- 0.08 Ha to Ibrahim Mungatha and LR. Ithima/Antuambui/7138 – 0.121 ha to Ibrahim Kangentu. The court in Meru CMC CC No. 231 of 2005 determined that because Joseph Meeme who sold the 2 pieces of land used the deceased person's identification to sell the 2 properties, the 2 were innocent purchasers without notice and that their titles could not be cancelled.

The applicant's is application dated 29.10.2018 seeks among others that order made on 18<sup>th</sup> July 2018 revoking grant be set aside and grant be reinstated. He also sought that this court cancels the subdivisions arising out Ithima/Antuambui/219.

The issue as to whether Ibrahim Mungathia and Ibrahim Kangentu were bonafide purchasers was determined in Meru CMC CC NO. 231 of 2005 and this court has not been shown that any appeal was preferred against such determination and it would be pre-emptive to make a second find on an issue already litigated upon without the court being properly moved.

It is true Joseph Meeme had no capacity to transact on the deceased persons land but now he is also dead and as it is this court doesn't have anyone to punish or direct the 2 purchasers to for a refund of the purchase price.

This court will reinstate the grant to applicant but find that Joseph Meeme now deceased (His family) will be entitled to a share of the estate subject to portions sold i.e

1. LR Ithima/antuambui/219 was originally approx. 0.60 Ha but the remaining resultants subdivisions in the name of the deceased M'Limbine M'Mauta
  - a) No. 7135 – 0.202 – M'Limbine M'Mauta
  - b) No. 7136 – 0.202- M'Limbine M'Mauta
  - c) No. 7139 – 0.036 – M'Limbine M'Mauta
2. LR. Ithima/Antuambui/2707 approx. 0.17 Ha – to be shared equally between applicants and family of the late Joseph Meeme. Julia Gateti

to hold in trust for the children of Joseph Meeme 0.085 ha.

Since Joseph Meeme sold 0.20 ha out of 0.60 ha from LR. Ithima/Antuambui/219, he will get less by 0.20 ha which he sold to the 2 objectors. Therefore, Joseph Meeme will get: -

$0.60/2 = 0.30 - 0.20 = 0.10$  Ha.

The balance to go to the applicant .

The application to revert titles to the deceased person's name is therefore not allowed. The estate shall be distributed as ordered above.

No orders as to costs.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 2.5.2019**

In the presence of:-

Ms Soi holding brief for Marete Advocate for objector

Ms Joshua Mwiti Advocate for Petitioner – N/A

Interested parties – present in person.

**HON A. ONG'INJO**

**JUDGE**