



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 279 of 2004

IN THE MATTER OF THE ESTATE OF BAIMARIA M'KACIUKI (DECEASED)

PETER MUNGERIA BAIMARA.....PETITIONER

VERSUS

M'MWIRABUA BAIMARIA M'IKUURU.....1ST INTERESTED PARTY

MALAI BAIMARIA.....2ND INTERESTED PARTY

KARIO BAIMARIA.....3RD INTERESTED PARTY

MUTHARAKA BAIMARIA.....4TH INTERESTED PARTY

KANAICU BAIMARIA.....5TH INTERESTED PARTY

RULING

This cause relates to the estate of Baimaria M'Kaciuki who died intestate on 4th April 1998 in Antuambui Location.

From for P&A 2 beneficiaries survived him namely:-

- Peter Mungeria and Lawrence Kinyua M'Mwambia

A letter dated 8th October 2002 by Assistant Chief Antuambui sub-location purported to identify Peter Mungeria Baimaria as having the right to get a share of the deceased persons estate.

L.R. No. Ithima/Antuambui was identified as only property in the estate but particulars are not complete. Peter Mungeria first filed the cause in Maua principal Magistrates Court cause no. 2 of 2003 before it was transferred to the High Court for purposes of confirmation.

On 9th May 2005 when the court noted that Peter Mungeria and Lawrence Kinyua were the only beneficiaries to the estate.

Ithima/Antuambui/775 3.30 Ha 2.8 acres

Summons for revocation by M'Mwirabua Baimaria M'Kuuru, Malai Baimaria, Mutharaka Baimaria, Kanaciu Baimaria dated 16.4.2018.

1st Interested party send the petitioner Peter Mungeria Baimaria was his brother:-

- 1st Applicant said Lawrence Kinyua Mwambia was not related to the deceased
- In the further application dated 20.6.2018 the 1st applicant sought inhibition orders on parcels of land that resulted from subdivisions of Ithima/Antuambui/775

Since 21.5.2018 the court gave direction that either both administrators filed application for confirmation and modes of distribution if they

concur or the one who doesn't agree with modes of proposal to file protest. Upto 6.9.2018 this had not been done and the court set matter for ruling on distribution on its own motion.

The submissions filed by M/S Mithega & Kariuki Advocates for petitioner are in response to application for revocation which this court disposed of on 21.5.2018. The petitioner in affidavit sworn on 30.7.2018 averred that L.R. Ithima/Antuambui/775 was given to him by the deceased.

That the deceased gave 1st interested party – M'Mwirebua Baimaria M'Ikuuru 2 parcels of land L.R Ithima/Antuambui/4f17 and 2436.

That 2nd interested party had 2 acres of land in Mautine and got titles directly as they were grown-ups and 1st Interested parties have refused to move to respective parcels of land and 2nd interested party has moved. That Kario Baimaria and Kanaciu Baimaria are his sisters and are deceased and could not have given consent to 1st interested party.

2nd Interested party disputed that he gave consent to 1st Interested party to file application for revocation. 2nd Interested party said the signature on consent letter dated 16.4.2018 filed on 9.5.2018 was not his and it was a forgery. 2nd Interested party averred that petitioner filed petition with his knowledge and that of all beneficiaries including 1st applicant.

2nd Interested party further averred that the petitioner was their last born brother and that the deceased gave him L.R Ithima/Antuambui/775 whereas 1st Interested party was given 2 parcels namely Ithima/Antuambui/417 and 2436.

He confirmed he was given 2 acres of land by the deceased in Mautini. He averred that he and 1st Interested party got their parcels of land directly because they were adults and as per the wishes of the deceased he had moved out of L.R. 775 but 1st Interested party had refused to do so. 2nd Interested also confirmed that their 2 sisters kario Baimaria and Kanaciu Baimaria were long dead and could not have given the 1st Interested party consent to file application on their behalf.

Birivina Mnotharaka Baimaria the daughter of the deceased in his affidavit sworn on 30th July 2018 also denied having given consent to 1st Interested party to file application for revocation on her behalf. Birivina Mnotharaka Baimaria reiterated what the petitioner and 2nd Interested party said concerning 1st interested party in their affidavit.

The 1st Interested party did not put a rejoinder to the responses filed by petitioner, 2nd Interested party and their Sister Birivina Mnotharaka in their affidavits all sworn on 30th July 2019.

From these affidavits it comes out very clearly that indeed it is 1st Interested party who is a greedy fraudster. Although it was not indicated in the petitioners petition that the deceased had any other children the failure and/or lack of that disclosure was not actuated with malice aforethought or bad faith. The petitioner must have been under the belief that because he was the only one entitled he needed not mention the names of his siblings.

In those circumstances this court revokes the grant made to 1st Interested party jointly with the Petitioner and reverts the same to the Petitioner. The confirmation made on 9.5.2005 is reinstated. Costs of application for revocation shall be paid by the 1st interested party. The 1st Interested party to forthwith vacate parcel of land no. Ithima/Antuambui/775.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 15th DAY OF NOVEMBER 2018.

In the presence of:

C/A: Kinoti

Petitioner:- Mr Kariuki Advocate

Interested Parties: Mr Kaimenyi Advocate holding brief for Rimita

HON. A.ONG'INJO

JUDGE