



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 428 of 2008**

**IN THE MATTER OF THE ESTATE OF M'IMWERERIA M'IMAANA MAWIRA (DECEASED)**

**DAVID MATE GEDION.....PETITIONER**

**VERSUS**

**JACOB MWITHAI M'MUNGANIA (On behalf of the estate of M'Mungania**

**M'ekanagatu (DECEASED).....OBJECTOR**

**GERALD MEME MITURI.....INTERESTED PARTY**

**RULING**

This cause relates to the estate of the late M'Imaana Mamira who died on 25<sup>th</sup> January 2005 aged 60 years and domiciled at Ngundune in Meru County.

According to the chief's letter dated 16<sup>th</sup> July 2007 the deceased left behind parcel of land no. Kiegoi/Kinyanka/193 which the chief of Kiegoi location said was held jointly by M'Mwerebia M'Imaana Mawira and David Mate Gedion. He identified David Mate Gedion as the joint owner and requested that he be allowed to petition for Letters of Administration. They were registered on 23.5.2002.

Grace Karimi Mati and M'Mungania M'Kangatu Ikangatu placed caution on L.R. 1931 on 20.9.2002 and 11.6.2004 respectively as licencees David Mate Gedion petitioned for Letters of Administration of the estate as creditor.

He attached agreement for sale of L.R. Kiegoi/Kinyanka/1931 between the deceased as vendor and himself as purchaser. The agreement is dated 20<sup>th</sup> March 2002. Letters of Administration were made to the petitioner on 15<sup>th</sup> February 2010. Grant was confirmed on 18<sup>th</sup> September 2012 devolving the entire estate to David Mate Gedion.

Application for revocation of grant was made on 25.9.2013 by Jacob Mwithali M'Mungamia claiming his father was a cousin to the deceased and that the petitioner was not in any way related to the deceased. He claimed the petitioner did file petition secretly and without informing his father for consent or even citing him. The applicants said the deceased was not survived by a spouse or child and that it is his father who was the closest relative and had priority in petitioning for Letter of Administration. It was also claimed that petition from one Samwel Kirimi Barungu claiming he was chief of Kathiari Location but he was not.

Secondly, he ought to have obtained a letter from chief of Kiegoi location to identify beneficiaries and/or dependants. He averred further that the surety to petitioner one Grace Karimi Mati was in fact his wife Jacob Mwithali M'Mungama filed a further application dated 28.11.2014 through the firm of M/S Haron Gitonga and Co. Advocates seeking that an order of inhibition be placed against suit land to restrain any dealings on it.

Both applications for an order of inhibition dated 28.1.2014 and application to revoke grant were allowed on 31.4.2014. on 16.6.2014 David Mate Gedion and Jacob Mwithali M'Mungama were appointed Administrators and directed to file application for confirmation and distribution and/or protest.

Preliminary objection was also raised by petitioner dated 17.2.2014 an account of joint ownership. He urged that applications for revocation and inhibition be struck out.

The objector claimed that in Maua PMC LDT C.NO 12 of 2005 the petitioner was awarded 0.10 acre out of suit land when the deceased person challenged his inclusion in the register by means of fraud as a joint owner and that he didn't challenge the award. In his supplementary affidavit sworn of 24.3.2014 the objector said the petitioner used falsehoods to obtain the grant because he claimed to be a creditor as well as joint owner.

Jacob Mwithali was appointed Administrator of the estate on 16<sup>th</sup> July 2013. On 31.3.2014 objections dated 17.2.2014 was withdrawn and application dated 28.1.2014 and 25.9.2013 allowed. Application dated 14.10.2015 seeking to restrain petitioner for intermeddling with estate property. He was alleged to be constructing a permanent building. On 26.10.2015 David Mate Gideon and Jacob Mwithali were appointed joint Administrators and petitioner directed to file application for confirmation within 7 days.

On 7.9.2016 directions were taken that application form confirmation and protest was to be canvassed by affidavits and submissions. On 16.11.2016 further directions were given that protest shall be heard by way of viva voce evidence. Finally after going back and forth on 9.10.2018 Mr Kiogora holding brief for Gitonga for Objector and Mr Mbaabu holding brief for Mutembei agreed that matter could be determined by way of written submissions and affidavits.

In consideration of the pleadings and proceedings herein this court finds that the petitioner did not challenge the finding of LDTC No. 12 of 2005 at Maua Principal Magistrates court which awarded him 0.10 acres out of the deceased persons estate.

The claim by the petitioner that he was joint owner with the deceased and again that he purchased the land from the deceased portrays him a dishonest man and I think that must have informed the decision to withdraw preliminary objection he filed seeking that objectors application for revocation and inhibition be struck out.

The estate shall be distributed as follows:-

1. 0.10 acre to David Mate

2. Balance to be shared equally amongst the children of the late M'Mungania M'Ekanagatu. The balance to held in trust by Jacob Mwithali M'Mungania.

The petitioner David Mate Gideon will pay half costs.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 15<sup>TH</sup> DAY OF NOVEMBER 2018.**

**In the presence of:**

C/A: Kinoti

Petitioner:- MS Mutembei for Petitioner

Objector: Mr Gitonga Advocate for objector

**HON. A.ONG'INJO**

**JUDGE**