



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 506 OF 2010**

**IN THE MATTER OF ESTATE OF LIMBINE MUKIRI**

**M'LIMBINE MBITI.....1<sup>ST</sup> PETITIONER**

**DANIEL KAINGA M'LIMBINE.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**MWAMATI MUTUMA M'LIMBINE.....RESPONDENT**

**RULING**

The deceased M'Limbine Mukiri died intestate on 20<sup>th</sup> April 1998 and left behind the following survivors.

1. Rael Itura – daughter-in-law
2. Daniel Kaing'a –son
3. Mbiti M'Limbine – son
4. Kaibi M'Limbine – son
5. Mohamati Mutuma – son
6. Kabii M'Limbine – daughter
7. Kailu M'Limbine – daughter
8. Muturia M'Limbine – daughter

This was identification by chief of Kiengu Location dated 28<sup>th</sup> July 2008 which was used by Daniel Kainga and Rael Itura to file succession cause in Maua CMC succession cause no. 20 of 2008.

The estate of the deceased is comprised of :-

1. L.R. Antubetwe/Njoune/1502
2. L.R Antubetwe/Njoune/858
3. L.R. Antubetwe/Njoune/1451

Grant in Maua succession cause no. 20 of 2008 was issued to Daniel Kaing'a and Rael Itura on 16<sup>th</sup> October 2008 and application for confirmation dated 22.4.2009 filed on 23.4.2009 – confirmed and certificate issue dated 29.7.2009.

By a letter dated 22.6.2010 CID Igembe Division wrote to E.O Maua Court to provide certified copies of proceedings to enable them investigate fraudulent transfer of land.

By an application dated 5<sup>th</sup> October 2010 C.B. Mwangela and Co. Advocates for Mwamati Mutuma M'Limbine filed this cause seeking that grant made and confirmed at Maua C.M.C be revoked.

On 20.7.2016 Justice Gikonyo nullified proceedings that took place before the Maua Chief Magistrates court for reason court had no jurisdiction then to issue and confirm grant.

M'Limbine Mbiti and Daniel kaung'a M'Limbine were appointed new Administrators to the estate on 9<sup>th</sup> November 2016 and parties were orderd to apply for confirmation. 2<sup>nd</sup> Administrator had filed mode of distribution by 16.11.2017.

1<sup>st</sup> Administrator was given time to file mode of distribution by 8.3.2018 but had not and 1<sup>st</sup> Administrtror advocate for reasons not given indicted he wanted to ceased acting. 1<sup>st</sup> Administration filed protest which directions were taken should be heard by way of written submissions.

I have looked at the mode of distribution in affidavit of Daniel Kaing'a in support of application for confirmationas well as protest by mwamati Mutuma in affidavit sworn on 20<sup>th</sup> June 2018 and find that the protest has been casue of all the trouble in this cause since it was filed in 2008 in Maua CMC cause no. 20 of 2008.

The mode of distribution by 2<sup>nd</sup> Administrator is REASONAL and all inclusive. The proposal of 1<sup>st</sup> administrator leaves out the daughters of the deceased claiming they are married and have no interests of getting a share of the deceased estate.

However there are no affidavits sworn by them to the effect they are denouncing their interests in the estate. He has also not shown that his late brother M'Nkanata the husband of Rael Ituma had benefited from any other land before the deceased person died. He confirms that Rael itura his late brothers wife lives on land in Njoune which 2<sup>nd</sup> Administrator said should be shared between 1<sup>st</sup> administrator and Rael. Rael to hold for herself and the children of M'Nkanata in equal shares.

In the circumstances I do find that proposal of Daniel kainga is reasonable and same is adopted as order of this court.

There shall be no orders as to costs.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 8<sup>TH</sup> DAY OF**

**NOVEMBER 2018.**

**In the presence of:**

C/A: Penina/Kinoti

Petitioner:- Present in person

Objector:-Present in person

**HON. A.ONG'INJO**

**JUDGE**