



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 685 Of 2011**

**IN THE MATTER OF THE ESTATE OF M'ITONGA M'MCUBITU ALIAS ITONGA NGUBITU - DECEASED**

**M'RINGERA M'ITONGA.....PETITIONER**

**RULING**

The intestate estate of the deceased M'itonga M'Nicubirtu who died on 26<sup>th</sup> April 1987 is due for distribution to M'Ringera M'itunga, M'Rutere M'itunga and Jason M'Mbui M'Itunga the sons of the deceased as per letter dated 3<sup>rd</sup> February 2011 written by chief of Kaaga location

The only property registered in the name of the deceased is L.R. Nyaki/Mulathankaari/647 M'Ringera M'Itunga was appointed Administrator on 21<sup>st</sup> March 2012.

Application dated 22<sup>nd</sup> August 2013 was filed for confirmation and the administrator proposed that the estate be distributed as follows :-

1. M'Rutere M'Itunga - .43 acres
2. Jason M'Mbui – 1.62 acres
3. M'Ringera M'Itunga – 0.22 acres
4. Stephen Mbaabu Harun – 0.32 acres
5. Reuben Kathurima M'Ringera – 0.27 acres
6. John M'Njeru – 0.30 acres
7. Julius MiritiM'Ringera – 0.27 acres

M'Rutere M'Itunga filed an affidavit of protest saying they had agreed as a family to distribute the estate equally among the deceased persons sons but the Administrator had shared to his sons and one John M Njeru and yet he was not a party to the sale of land to Njeru.

Jason M'Mbui said that the protester was lying because each of them occupy specific portions of land with permanent boundaries which cannot be tampered with. Jason M'Mbui urged the court to dismiss protest.

M'Ringera M'Itunga in reply to protest said that his brothers consented to mode of distribution as per their fathers wishes and that each of them have been occupying portions identified by their father for over 20 years with permanent boundaries. The Administrator said he is old and decided to distribute his share to his sons but his brothers refused.

He said a surveyor came to the ground and took measurements that he used to distribute the estate. He said if resurvey is done it will cause irreparable damage as the boundaries and structures on each ones portion will be affected.

The protest was heard by viva voce evidence. The protester testified and closed his case on 19<sup>th</sup> September 2017. He said the petitioner encroached on his portion of land which distributing the estate he said a surveyor can visit and establish portion being occupied by each beneficiary.

The petitioner did not attend to give his testimony. In the circumstances this court finds that the protester has established that the estate should be distributed equally with each of the 3 sons remaining on the portions of land they are occupying.

No orders as to costs.

**HON. A. ONG'NJO**

**JUDGE**

**6.12.2018**

**Before Adwera J**

Kinoti – Court Assistant

KaimenyiKithinji and co advocates – N/A for petitioner

Petitioner – N/A

Protester – N/A

N/A for Joan Ndorongo and Co. advocate for protester.

**Court**

Ruling delivered dated and signed in court on this 6<sup>th</sup> Day of December 2018.

**HON. A. ONG'INJO**

**JUDGE**