



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 119 OF 1993**

**IN THE MATTER OF M'TWARUCHIU M'RIMBERIA -DECEASED**

**SAMUEL M'KIUGU.....APPLICANT**

**VERSUS**

**KITHURE M'TWARUCHIU....OBJECTOR**

**JUDGEMENT**

This cause relates to the intestate estate of the late M'TuaruchiuM'Rimberia who died on 26<sup>th</sup> September 1986 domiciled at Kiirua Location in Meru County.

Samuel M'Ikiugu was appointed Administrator on 16<sup>th</sup> October 1995. KithureM'turuchiu applied to be allowed to lodge cross petition because administrator had omitted the names of the widow and 3 sons to the deceased and he filed petition secretly. He said he was surprised that Administrator claimed there was oral will. Objection was heard by viva voce(oral) evidence. Peter Miriti said that Samuel IkiuguKithureM'Turuchiu are his brothers and sons of the deceased who is owner of L.R Kiirua/Naari/473. He said he resided on L.R.473 together withKithure but Samuel does not reside on LR 473 is 1.25 acres. He said the deceased acquired land for Samuel the petitioner. He said the 3 of them were deceased children born out of wedlock and they were brought to the deceased at different times.

He said the deceased had 5 wives. He said he was brought to LR 473 in 1993 when he was shown where to construct his house. He said that his 3<sup>rd</sup> name is not for father. He said his wife died in a road accident and he buried her in hospital cemetery because he didn't have money to transport the body. He said by then his father was alive but he didn't have money

2<sup>nd</sup> objector witness Stephen Kimonye said he knew Samuel, Kithure and Peter Mwiti as sons of the deceased. He said he didn't know who had constructed on L.R. 473. He said in 1986, the petitioner was said to call him and when he went to the deceased, the deceased told him he had a son who was born out of wedlock and who was to inherit land No. 473. He said the deceased stated that it was petitioners son Murithi who was to inherit from him because he had acquired land for the petitioner. He said the deceased send for him when he was sick. He said the petitioner and the objectors are all deceased sons from different mothers born out of wedlock.

M'Mutugi Kanji Charles said the petitioner and the 2 objectors were brothers. He said that it is petitioners son who was given land in LR and not petitioner. The petitioner said they were 3 sons but one of the sons Kathurima had died. He said Peter Miriti the 2<sup>nd</sup> Objector was not son to the deceased. He said Miriti's mother got lease of land from the deceased and she was paying 30/= per month. That when she was unable to pay they started differing with the deceased. He said when 2<sup>nd</sup> Objectors wife died the deceased refused to give him land to bury her remains and she was buried in a public Cemetery. He said that before the deceased died the 2<sup>nd</sup> Objector and his mother left for Timau. He said that 2<sup>nd</sup> Objector sued seeking damages for the wife's death in RTA and he was paid.

He said that the deceased had a wife who didn't have children but was related to Peter Mwiti the 2<sup>nd</sup> Objector. He said the deceased youngest wife didn't have children. He said Peter Mwiti conspired with some elders and Rael who constructed for him a house forcefully at night. He said he reported to Assistant Chief, chief and later filed a suit for eviction. He said LR 473 should be distributed between himself and Samuel the 1<sup>st</sup> Objector as well as Murithi. He said the land measures 3 acres and he is supposed to get 2 acres whereas the 1<sup>st</sup> objector and Murithi gets ½ acre each.

The 1<sup>st</sup> Objector said he grew up at his uncle's place after his parents separated. He said he returned to deceased home in 1980 and he didn't find the 2<sup>nd</sup> Objector and he doesn't know who between him and Mwiti is older. He said that 2<sup>nd</sup> Objectors ID didn't have deceased person's name. he admitted that Stephen Kimonya and Charles Mutungi were he fathers friends. He said he was present when the deceased told them his wishes in 1985. He said before deceased died he chased 2<sup>nd</sup> Objector and his mother. He said title for LR 473 was in the deceased persons name. he said Samuel acquired land on his own.

The petitioner said the deceased wish was that the land is shared between him, 1<sup>st</sup> Objector and his son Murithi. He said Rael is not Mwitisi mother but stays with together with mwitisi mother.

The petitioners evidence was that the deceased had 3 sons and one of them Kathurima died leaving no child or spouse. He said 2<sup>nd</sup> Objector is not his brother. He said the 2<sup>nd</sup> objector and his mother leased land from their father. He said the issue was deliberated at Chiefs baraza and it was established 2<sup>nd</sup> Objector Mwitisi didn't come from their clan and was not deceased persons son and his ID card didn't bear deceased persons name. he said the deceased chased Mwitisi before he died and even when his wife died the deceased didn't allow him to bury on his land.

That Mwitisi came back and asked petitioner to show him where to put up his home. He said elders conspired with 2<sup>nd</sup> Objector and put up a house for him at night. He said 2<sup>nd</sup> objector had tried to kill him twice by hitting his car with a rungu and again cut him on the back and filed Meru CMC CC.NO 791 of 1993 to have him evicted. He said that he should get one acre whereas 2<sup>nd</sup> objector gets 1.50 acres and his son gets 0.50 acres according to his father's wishes. He said Mwitisi's mother didn't live in the deceased persons homestead. He said that his mother was deceased persons 1<sup>st</sup> wife and 1<sup>st</sup> objectors mother was 2<sup>nd</sup> wife and Kathurima's mother was 3<sup>rd</sup> wife. He said Rael was deceased persons 4<sup>th</sup> wife but didn't have children. Petitioner said that the deceased had chased Mwitisi away by the time he died. He said the 2<sup>nd</sup> and 3<sup>rd</sup> - 2<sup>nd</sup> objectors witnesses visited his father when he was about to die and talked to them and died about one year after he talked to the 2.

He said that one of the elders Kimonye was involved in the deceased persons burial arrangements and he had no grudge with them. Petitioner said he had his own land. He said Mwitisi and the mother were chased when they were unable to pay rent. He said his father told 2<sup>nd</sup> objectors witness how to share land between himself and 1<sup>st</sup> objector and his son Murithi and didn't mention Mwitisi as he had been chased away.

The 2<sup>nd</sup> witness for petitioner said he was Area Manager in the village where deceased lived. He said that he presided over dispute involving 2<sup>nd</sup> objector and family of the deceased and when they asked for 2<sup>nd</sup> objectors identity card he refused to produce it and he referred matter to Assistant chief. He said 2<sup>nd</sup> Objector ID card showed he was son of Ikuinga.

Simon Riungu the Petitioners witness said he was Assistant chief of Naari sublocation since 1984 when the deceased was still alive. He said he never saw Peter Mwitisi stay in deceased persons land. He said it was Samuel Ikiugu who filed complaint that Peter Mwitisi had trespassed into deceased persons land after deceased died. He said he listened to the complainant and referred the matter to court. That the chief gave a letter introducing Samuel and he came to court. He said 1<sup>st</sup> and 2<sup>nd</sup> Objectors occupy the suit land. He said deceased had 3 sons. He said Stephen Kimonye was Area manager of a different village. He said it is M'Itonga who was area manager for deceased persons village. He said Charles M'Mutungu was not Area Manager of deceased persons village.

From the evidence on record, it is not 1<sup>st</sup> disputed that Objector and Petitioner were left living on deceased persons land knowing that they were sons. It is also not in dispute that the 2<sup>nd</sup> objector herein came later after the deceased persons death. Petitioner and 1<sup>st</sup> objector said that Peter Mwitisi and his mother were chased from suitland before deceased died and that even when his wife died in a Road accident the deceased didn't allow him to bury his wife on suit land. Although he says that he didn't have money to transport the body, that was disputed by petitioner and 2<sup>nd</sup> Objector and there was no other evidence in support of that allegation. Petitioner confirms that his father called Stephen Kimonye and Charles M'Mutungu Kanyi and he told them his wishes but the 2 in their statement say that the deceased told them that even the one who was not present would also get land.

Both don't say who was being referred to and why the deceased had chased Peter Mwitisi if he intended to give him land.

They don't say why the deceased didn't allow Mwitisi to bury his wife on suit land. If he intended to give him land. Both Charles kanyi and Stephen Kimonye confirm that it is Rael, the wife of the deceased who called clan meeting when a dispute arose between the objectors and the petitioner. They confirm it was Rael who personally brought Peter Mwitisi to suit land. If it was the wish of the deceased that Mwitisi comes back it would not have been the responsibility of Rael the widow of the deceased to take it upon herself to bring the 1<sup>st</sup> objector.

Peter Mwitisi, Stephen Kimonye and Charels M'Mutungu have not responded to circumstances under which Mwitisi initially occupied deceased persons land before the deceased declined to have his wife buried on the land and finally chasing him.

The 2 don't dispute they were among elders who conspired with Mwitisi and Rael to settle Mwitisi on suit land at night. If Mwitisi was truly entitled to land he only needed to go to court and claim his right as deceased persons heir but he forcefully entered the land at night without authority to justify his claim.

A suit was filed against him Meru CMC No. 791 of 1993 in which an order of eviction was issued against him to be executed by the District Officers office and the OCS Kiirua Police station. The 1<sup>st</sup> Objector didn't say anything about the case and it is not shown he filed an appeal against the decision to evict him. If Mwitisi was deceased persons son the mother should be the one to prove that. Rael who personally got him to the land didn't testify.

This court finds that the 2<sup>nd</sup> Objector Peter Mwitisi has not proved his case sufficient to find he is entitled to inherit the deceased persons land. His objection is dismissed.

Ist Objector and Petitioner are hereby appointed joint Administrators. The estate of the deceased – LR. No. Kiirua/Naari/Maitai/473 shall be distributed as follows:-

- 2 acres to 1<sup>st</sup> objector
- 0.5 acres to petitioner
- 0.5 acres to Murithi the son of petitioner.

A certificate of confirmation to issue to that effect

**HON A. ONG'INJO**

**JUDGE**

**6.12.2018**

**Before Adwera J**

Kinoti C/A

MrMutuma Advocate for Petitioner

MrRingera for 2<sup>nd</sup> Objector – N/A

Petitioner – present in person

2<sup>nd</sup> Objector- present in person

1<sup>st</sup> Objector No appearance

**Court**

**Judgment delivered dated and signed in court on the 6<sup>th</sup> day of December 2018**

HON A. ONG'INJO

JUDGE