



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 597 OF 2010

In the Matter of the Estate of M' Ringera M' Kungania (Deceased)

SOLOMON BUNDI RINTARI.....PETITIONER

Versus

M' KIAMBATI M' RINGERA.....1ST OBJECTOR

M' MBIJIWE M' RINGERA.....2ND OBJECTOR

RULING

Efficacy of viva voce evidence

[1] In a ruling delivered on 7th September 2016, this court directed the Objectors to file and serve their mode of distribution within 10 days of today which failing the order of stay herein shall lapse and administration of the estate shall proceed as per the confirmed grant.

[2] Pursuant to this directive, parties filed their respective submissions. But upon careful consideration of the submissions and the affidavits filed, critical matters have emerged which I do not think could be effectively determined through mere written submissions. Those matters- and I will mention them below- require intense interrogation; something that cannot be achieved in a restricted method as written submissions.

[3] From the record, it appears the deceased had two houses. The disclosed children of the 1st house are; M'Rintari M'Ringera, M'Muguongo M'Ringera and Loise Gaiti. Those of the 2nd house are; M'Kiambati M'Ringera, M'Mbinjiwe M'Ringera and Rosemary Karwitha. Again, after perusal of the record, it seems the deceased had two parcels of land namely, NTAKIRA/546 and KIIRUA/205. The objectors have alleged that the deceased in an oral will shared his properties during his lifetime to the two houses. They claim that he gave the 1st house land number NTAKIRA/546 where the members of the 1st house including their grandchildren live; and that he gave the 2nd house land number KIIRUA/205. Further claims were made; that now the petitioner who comes from the 1st house is now laying a claim over KIIRUA/205 in order to deprive the other house its inheritance. Are these not matters of extreme significance in distribution of the estate of the deceased under the Law of Succession Act especially in light of section 42 of the Act? See the objectors' affidavits.

[3] In addition, there are allegations that Mary, Loise and Moses Mbaya has sold large tracks of the estate property before confirmation and that those buyers are the source of trouble in this case. Once more; are these allegations not of special interest to the law? Worthy of note is that, the Petitioner has not uttered

any specific denial of the foregoing allegations. In my considered view, these matters are boggling yet so important in law and distribution of the estate of the deceased. As such, the court is required to make a special endeavour to unravel them: and in particular, by calling for viva voce evidence from witnesses. Accordingly, in order to attain the duty of the court under rule 41(1) of the Probate and Administration Rules, I direct that the Application for confirmation and all protests filed herein shall be determined by way of viva voce evidence to be taken on a date to be assigned by court. This is in addition to the affidavits and submissions filed herein. The matter shall also be given priority. It is so ordered.

Dated, signed and delivered in open court at Meru this 10th day of May 2017

F. GIKONYO

JUDGE

In the presence of:

Mrs. Kaume for objectors

Mr. Muthami for Anampiu Gikunda for petitioner

All parties – present

F. GIKONYO

JUDGE