



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 117 OF 2001**

**RIMBERIA BAICHU.....DECEASED**

**VERSUS**

**BURIA RIMBERIA.....OBJECTOR**

**J U D G M E N T**

- 1) The petitioner **FRANCIS MURURU M'RIMBERIA** was issued with grant of letters of administration intestate on 26<sup>th</sup> July, 2001 and on 26<sup>th</sup> August, 2002 filed his proposal on distribution of the deceased estate.
- 2) The objector **BURIA M'RIMBERIA BAICHU** filed his objection on mode of distribution on 16<sup>th</sup> December, 2005 setting out his mode of distribution. The court gave directions that the issue of distribution be determined by way of viva voce evidence.
- 3) The objector gave evidence and called 2 witnesses whereas the petitioner gave evidence and called two witnesses.
- 4) The objector's case is that the petitioner is his brother and that their father had five (5) sons who he listed as **JOSEPH MUGAMBI; FRANCIS MURURU; BURIA M'RIMBERIA; PETER NTUTUMI AND BARTHOLOMEW MWENDA(Deceased)**. That the deceased had 2 parcels of lands NYAKI/MULATHANKARI/807 and 170. He averred that he wished to have the estate distributed as per paragraph 6 and 7 of his affidavit dated 9<sup>th</sup> December, 2005. On cross-examination he testified that distribution should follow paragraph 8 of his affidavit so that he gets 3.36 acres as Mwenda(deceased) gave Mururu 0.25 acres and the balance to him. He averred he had given evidence to his lawyer and as such he was entitled to a bigger share of the estate. That in a meeting of 26/7/2005 it was agreed that he did not have a claim to Mwenda's land. That the objector admitted Mwenda sold his land to Mururu and so did Ntutumi who sold part of his share to Mururu. DW2 evidence was that the deceased had two parcels of land and that each of the deceased children has a distinct portion of land with a house on it. DW3 evidence was that the deceased showed his sons their respective portions and that when Bartholomew died his portion was shared. He confirmed he never attended any discussion of the sharing of the deceased land.
- 5) The petitioner in his evidence agreed with the objector on the deceased dependants and the assets. The petitioner averred that the land had been shared amongst the five(5) sons of the deceased each getting 2.04 acres. That he had bought 0.48 acres from Bartholomew(deceased). 0.24 acres from Peter Ntutumi M'Rimberia and made a sale agreement before an advocate dated 18/3/1999 which he produced as

“P.Exhibit.3”. He therefore claims 2.54 acres. He contended that the objector should get 2.04 acres; PETER NTUTUMI 2.04 acres less 0.24 acres equaling to 1.80 acres. The petitioner stated if the objector insisted on equal sharing he should refund him all the money so as to have 0.48 acres shared equally. The petitioner testified that on 26/07/2001 57 elders assisted in arbitration before the District Officer when objector claimed he had bought 1.40 acres from Bartholomew but instead of producing sale agreement he produced a letter for lease whereby the District Officer decided 1.40 acres be divided equally to 0.35 points. The minutes were produced as “Pexh.4”.

6) PW2 testified that both the objector and the petitioner are his brothers. He supported distribution of the deceased lands as per private surveyor’s subdivision whereby each son was to get 1.68 acres including Bartholomew Mwenda’s(deceased) share. He testified that Francis Mururu had bought 0.24 acres from Bartholomew Mwenda and Peter Ntutumi all in all being 0.48 acres. He summed up the shares of his brothers as follows:-

**1. Joseph Mugambi - 2.04 acres**

**2. Francis Mururu - 2.52 acres**

**3. Tom Baichu - 2.04 acres**

**4. Peter Ntutumi 1.80 acres** and 0.30 acres road of access. PW2 added that all the beneficiaries are settled on the land with clearly delineated boundaries and each has his home on his portion and that their boundaries were put long time ago which they have all respected.

7) PW3 brother to the objector and the petitioner corroborated the evidence of DW1, PW1 and PW2 on the deceased heirs and the assets, adding that they all set and agreed to share the deceased land equally amongst the 5 sons so that each got 2.04 acres out of the two portions of lands. He stated Bartholomew Mwenda (deceased) was not survived by anyone as he was not married and had sold 0.24 acres to Francis Mururu. That PW3 also sold 0.24 acres to Francis Mururu. Therefore his portion should be 2.52 acres. PW3 stated his portion remained at 1.80 acres.

8) The court has carefully considered the pleadings, affidavits in support and in opposition as well as evidence by the objector and his witnesses and that of the petitioner and his witness which this court has taken pain to reproduce. The court has considered rival submissions filed for the objector on 21<sup>st</sup> July, 2014 by Mr. Kiogora Arithi, learned Advocate and the petitioner’s submissions filed on 23<sup>rd</sup> July, 2014 by Mr. Leonard K. Ondari learned Advocate for the petitioner. The issue for determination is whether the deceased estate was shared and if so what became of Bartholomew Mwenda’s share and which of the rival mode of distribution as filed by the objector and the petition is reasonable, justifiable and affords fairness and equity amongst the deceased beneficiaries.

9) I have carefully analyzed and evaluated the parries evidence and I am satisfied that the deceased was survived by five(5) sons and had two properties namely NYAKI/MULATHANKARI/107 and 807. That the lands were shared equally amongst the five sons of the deceased each getting 1.68 acres including Bartholomew Mwenda (deceased).

10) From the evidence of PW1 ,I find that he was unable to produce either documentary evidence or any other evidence to confirm that Batholomew Mwenda after giving 0.25 acres to Mururu he gives him balance of his land. Indeed the document he produced before District Officer was a letter of lease but not a sale agreement. DW1 agreed that Batholomew Mwenda gave 0.25 acres to Francis Mururu, this evidence corroborates evidence of PW1, PW2 and PW3 that Batholomew (deceased) sold 0.24 acres to Francis Mururu. PW1 evidence is further corroborated by PW2 and PW3 that he further purchased 0.24 acres for PW3 and his portion should be 2.52 acres whereas his other brothers other than PW3 who should get 1.80 acres, should get 2.04 acres.

11) There is no dispute from the objector’s evidence and his witnesses as well as that of the petitioner that each of the surviving sons of the deceased have distinct portions where each is settled with

clearly demarcated and fenced boundaries in compliance with the initial sharing of the land equally and the parties have been respecting their respective boundaries. The distribution was fairly and equitably done. I have compared the evidence of the mode of distribution and I find the proposal of mode of distribution by the objector not supported by evidence. The proposal by the petitioner is acceptable to all objectors' brothers other than the objector.

12) The upshot is that the deceased estate shall be distributed as proposed by the petitioner that is to say:-

<i>a. Joseph Mugambi</i>	<i>– 2.04 acres</i>
<i>b. Francis Mururu</i>	<i>– 2.52 acres</i>
<i>c. Buria M'Rimbere Baichu</i>	<i>- 2.04 acres</i>
<i>d. Peter Ntutumi</i>	<i>- 1.80 acres</i>
<i>e. road of access</i>	<i>- <u>0.30 acres</u></i>
<i>Total</i>	<i>-<u>8.70 acres</u></i>

Each party to bear its own costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 16<sup>TH</sup> DAY OF OCTOBER, 2014.**

**J. A. MAKAU**

**JUDGE**

**Delivered in open court in the presence of:**

1. Mr. Kiogora Arithi for the objector
2. Mr. Leonard K. Ondari for the petitioner

**J. A. MAKAU**

**JUDGE**