



REPUBLIC OF KENYA



**Namu & another v Nthakanio (Succession Cause 288 of 2013)  
[2024] KEHC 16083 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16083 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 288 OF 2013  
LM NJUGUNA, J  
DECEMBER 19, 2024  
(FORMERLY RUNYENJES MC SUCCESSION CAUSE NO. 87 OF 2009)**

**BETWEEN**

**MARY ROSE NAMU ..... 1<sup>ST</sup> APPLICANT**

**ELIZABETH CIUNGU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KITHAKA NTHAKANIO ..... RESPONDENT**

***(FORMERLY RUNYENJES MC SUCCESSION CAUSE NO. 87 OF 2009)***

**RULING**

1. After delivery of the judgment in this matter, the parties disagreed on the actual distribution of land parcel number L.R. Kaagari/Weru/505. Both sides ventilated their dissatisfaction before the court and the court, on 21<sup>st</sup> June 2022, gave this order:
  - a. The land Registrar and the Land Surveyor together with the counsels on record to visit the land L.R. Kaagari/Weru/505 and advise the court and the parties how the land should be distributed fairly with all the beneficiaries having access to the road and other utilities. A report to be prepared and filed in court.
2. Following this order, the Land Registrar and the Land Surveyor visited the land and suggested proposed 2 options of enforcing the certificate of confirmation of grant, an in pursuance to the court order.
3. However, the applicants filed an affidavit dated 06<sup>th</sup> February 2024 and wherein they produced a private surveyor's map and photographs of the miraa development allegedly planted by Peter Gakono Nthakanio, of the first house who are the applicants. They urged the court to go by that proposed mode as it ensures satisfaction of the court order issued.



4. The respondent filed an affidavit in response to the affidavit by the applicants and wherein he deposed that the miraa was planted deliberately to frustrate his efforts when he was implementing the grant and that the surveyor's report filed by the applicants was not sanctioned by the court. He urged the court to allow distribution according to its option B and deposed that the distribution proposed by the applicants' private surveyor is what he had proposed earlier to the court but the titles were revoked. He urged the court to go by the mode proposed to the court earlier before revocation or the option B by the government surveyor.
5. The court directed the parties to file their written submissions on the various survey reports to enable distribution of the land.
6. The 1<sup>st</sup> applicant submitted that her private surveyor subdivided the land into 6 portions. That portion F is the portion measuring 4.286Ha or 10.94 Acres as indicated in the certificate of confirmation of grant. It touches a road on one side and Ena River on the other side. There is a seasonal river along the length of that portion of land on one side. That portions A,B,C,D and E have equal access to the existing road while the owner of portion A is also the owner of all the Miraa therein and he has ceded portions of Miraa to the other beneficiaries, and he remains with an area of 1.3486Ha.
7. She stated that portions B,C,D and E have water pipes laid on them to enable access to water on that side of the land. That this distribution is according to the mode of distribution adopted by the court in the confirmed grant. The 2<sup>nd</sup> applicant was open to either of the options proposed by the government surveyor. Option A of the government surveyor's map was not acceptable to the 1<sup>st</sup> applicant as it states that the land be subdivided into 9 portions which contradicts the court's distribution into 6 portions.
8. That it proposes redistribution such that the part of the Land with Miraa is taken away from the beneficiary who invested in the development and it is given to others. That using this proposal, not all the beneficiaries will access water from Ena River. In her view, option B is worse because the land will be subdivided into 10 parts and most of them are not served with water resources and other facilities. That the court directed the parties to give their views on the distribution but the government surveyor ignored the views by the beneficiaries.
9. The respondent submitted that the distribution proposed by the private surveyor did not involve all the parties and that the court should not consider it in the first place. That he had proposed a similar mode earlier to the court that the subdivisions had been registered and all the portions had access to the river and the road. That mutation boundaries which had been erected by the respondent before revocation, are still in place. He urged the court to adopt the mode that had been presented before Judge Muchemi on 22<sup>nd</sup> July 2020, which is similar to the one proposed by the private surveyor, as it will save time and money and it will serve the purpose ordered. That any other distribution will prejudice the other beneficiaries.
10. The issue for determination is, which survey option should be used to subdivide the land in light of the grant?
11. I have perused through the entire file and I note that the beneficiaries herein are from two houses. The mode of distribution in the certificate of confirmation of grant was such that one family was to get their share as a block and the other family was to get their separate shares. However, in the preliminary, I find the report attached to the applicant's affidavit sworn by the 1<sup>st</sup> applicant cannot be admitted as it is not clear as to who made the same and whether the same was drawn upon the land having been visited. Moreover, it is clear that the same was drawn without the participation of all the beneficiaries as ordered by the court. therefore, it is not tenable before this court.



12. It is not in dispute that the respondent herein, as an administrator, had sub-divided the land before (even though the titles were since revoked), but from the record it is clear that he combined the share belonging to the applicants into one block. What this means is that the mutations out of the sub-division and also the boundaries are still in existence. In my view and comparing the survey options by the government surveyor, it is clear that interests of justice favours the mode of sub-division which would achieve the spirit of this court's order given on 21<sup>st</sup> June 2022. In doing so, it retains the said features earlier set and, in my view, the same ought to be option B of the government surveyor's distribution. The said mode of sub-dividing the land clearly shows that each of the parties shall have a road and access to the river.
13. The respondent invited the court to allow the mode of sub-division which he had earlier made before the titles were revoked arguing that the same would save on costs as there will be no need to call a surveyor to resurvey the land. However, I have perused the court record and it is clear that the said mode had no provisions for access roads. With option B by the government surveyor, there will be access roads for the other beneficiaries and further they will all have access to the water directly. Further the earlier sub-division cannot stand as it combined one house into one block, which is against the findings in the certificate of confirmation of the grant.
14. The applicants deposed that they had grown miraa on the said portions. However, and I agree with the respondent that planting miraa on a portion which did not belong to them, in the advent of their application for revocation, is not reason enough to prevent this court from distributing the estate equitably.
15. In the circumstances, I find that the appropriate mode of sub-dividing the land herein in implementing the certificate of confirmation of the grant would be the mode proposed by the government surveyor in option B and wherein the applicants' portion and that of their house are accessible through the roads created on the land and the respondent's share is near the main road. The said distribution should as thus be used.
16. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the 1<sup>st</sup> Applicant

..... for the 2<sup>nd</sup> Applicant

..... for the Respondent

