



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 335 OF 2002

IN THE MATTER OF THE ESTATE OF KARANJA MBOGO (DECEASED)

NYAGA GACHERU.....PETITIONER/RESPONDENT

VERSUS

BENSON IRERI KARERE (Substituting

SIPHIA RIIMI KARERE).....PROTESTOR

R U L I N G

A. Introduction

1. This ruling pertains to the affidavit of protest against confirmation filed by the protestor's mother on the 13th April 2012. The original protestor Siphia Riimi Karere passed on before these proceedings were concluded and was later substituted by her son Benson Ireri. The affidavit of the protestor's mother states that the petitioner was not the rightful heir to the estate of the deceased and as such the protestor should be registered as the rightful heir of the deceased's estate that entails land parcel No. KAGAARI/KIGAA/596.
2. It is the protestor's case that the respondent described himself as the grandson of the deceased in the petition and listed the original and four others persons as survivors of the deceased. It is noted that the original protestor and her siblings did not object to the issue of grant to the petitioner at the initial stages of these proceedings.
3. The protestor further stated that the petitioner occupied the deceased's estate by force after the deceased's death. Her case was corroborated by one Jackson Njue Nyaki who testified that the original protestor was the deceased's daughter whereas the petitioner was the son of one Ngondi Njau.
4. The petitioner in response testified that the deceased was his grandfather and the original was his aunt. He testified that he was a son to the late Gacheru Karanja, the deceased's son who had predeceased the deceased herein. It was his case that he filed the petition for grant with full knowledge of the original protestor and other survivors of the deceased. He further testified that his father was the younger brother of the original protestor and that he had been in occupation of the suit property for the last 60 years as the original protestor and her siblings lived in their matrimonial homes.
5. The petitioner's testimony was corroborated by one Nthiga Mbogo who said that the original protestor was the daughter of the deceased and that the petitioner was indeed the grandson of the deceased.

B. Protestor's Submission

6. It is the protestor's case that the petitioner was not a beneficiary of the deceased under section 38 of the Law of Succession Act and as such the estate of the deceased ought to devolve to the protestor who was the son of the deceased's daughter.
7. He further submitted that since the petitioner was in occupation of the suit property, the said property ought to be shared by himself and the petitioner in equal shares.

C. Respondent's Submissions

8. The respondent urged the court to consider that he had been in occupation of the suit property for over 50 years. He relied on the case of **Re Estate of Mugo Njagi (deceased) [2018] eKLR** where the court dismissed the applicant's claim over property he had left ages ago as it amounted to greed and would be a travesty of justice.

9. He also relied on the case of **Stephen Irungu Wanjenga v Karanja Maina [2017] eKLR** where the court held that the possession and occupation by the protestor's father of the suit property is an overriding interest attached to the suit property.

D. Analysis & Determination

10. Issues for determination are: -

a) Whether the protestor is a beneficiary in the deceased's estate.

b) Whether the petitioner was a grandson of the deceased.

c) Whether any of the parties are entitled to a share in the estate.

11. From the evidence of the original protestor Siphia Riimi Karera, she was the only daughter of the deceased surviving or interested in the deceased's estate at the time she filed her protest in 2002. The other daughters named in these proceedings as beneficiaries namely Anna Mbiro, Anna Ciamburi and Esther Irimba did not register any interest in these proceedings. It is not even known whether they are still alive for their names do not feature in the evidence of the parties. The petitioner said he obtained the consent of the three daughters of the deceased since he named them as beneficiaries in this cause.

12. The 1st protestor Nyaga Samson said to be a brother to the petitioner withdrew his objection. He described himself as the nephew of the deceased. The 2nd protestor Siphia Riimi was left as the only protestor in this cause. Unfortunately, she died before the protest was determined. However, she had given her evidence and closed her case before Bwonwonga, J.

13. In her evidence, she said that the respondent was not a grandson of the deceased but a son to one Ngondi Njau. Being a daughter of the deceased original protestor must have known the relatives of the deceased. She specifically told the court that "Nyaga Gacheru the petitioner is not my relative." His evidence was that the petitioner came to live and occupy the deceased's land after his death.

14. Siphia gave the names of all the children of the deceased in her evidence who included herself as the 4th child. The name the petitioner gave of Gacheru Karanja as his father did not feature among the children of the deceased in the list of Siphia Riimi.

15. The evidence of the petitioner and his witness DW1 did not give vivid details as to the petitioner's relationship with the deceased. He did not mention who his mother or sibling were in order to establish blood relation with the deceased.

16. After the death of the original protestor, her son Benson Ireri Karere took over the case. His mother had already testified and Benson relied on that evidence.

17. It is my finding that the respondent did not establish before the court that he was the grandson of the deceased.

18. As for Benson Ireri, the evidence of his late mother and the admission by the original protestor proves on the balance of probability that he was a grandson of the deceased.

19. In absence of any child of the deceased claiming inheritance, the protestor Benson Ireri is the sole heir of the deceased's estate.

20. However, the protestor sympathizes with the situation of the respondent who has been living on the deceased's land for many years and states that he is ready to give half of the estate to him. The court has no problem with the protestor's proposal.

21. The deceased's estate comprises of only one asset LR. Kagaari/Kigaa/596.

22. For the foregoing reasons, this court hereby confirm the grant issued to the petitioner in terms proposed by the protestor that each of the parties takes have share of LR. Kagaari/ Kigaa/596.

23. Each party to meet their own costs.

24. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF JULY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for Ithiga for Applicant

Mr. Ndolo for Andande for Respondent