



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**SUCCESSION CAUSE NO 622 OF 2013**

**FORMERLY RUNYENJES SUCC NO. 185 OF 2012**

**IN THE MATTER OF THE ESTATE OF NJERU NJANDOVI (DECEASED)**

**BERNARD NJERU KINYUA.....PETITIONER**

*Versus*

**AMOS NJUE NJERU.....PROTESTOR**

**RULING**

1. Amos Njue Njeru the protestor (PW 1) filed this protest against Bernard Njeru Kinyua, who is his elder brother. The essence of the protest concerns the subdivision of their father's estate, which is comprised of two acres of land.

2. According to the protestor their late father had subdivided the two acres of land into portions of a  $\frac{1}{4}$  an acre each. He then distributed the six portions of a  $\frac{1}{4}$  of an acre as follows:

1. His younger brother was given a  $\frac{1}{4}$  an acre

2. Protestor was given a  $\frac{1}{4}$  an acre

3. The mother of Kinyua a  $\frac{1}{4}$  an acre

4. The grandchild of the deceased was given a  $\frac{1}{4}$  an acre

5. Another grandchild was given a  $\frac{1}{4}$  of an acre

6. The mother of the protestor was given a  $\frac{1}{4}$  of an acre. It is his evidence that land was subdivided into six portions namely Kyeni/Mufu/4542, Kyeni/Mufu/4543, Kyeni/Mufu/4544, Kyeni/Mufu/4545, Kyeni/Mufu/4546 and Kyeni/Mufu/4547.

3. It is his further evidence that the petitioner who is the administrator of the estate was not happy with this mode of distribution. When their father summoned a meeting, the petitioner who is also the administrator refused to attend that meeting for reasons not known to the protestor. The petitioner went ahead and occupied a  $\frac{1}{4}$  an acre that had been given to the protestor's mother (PW 2). It is this occupation and expropriation that gave rise to this protest.

4. The evidence of the protestor (PW 1) is supported by his mother, Irene Wanja (PW 2). PW 2 testified that the petitioner who is also the administrator of the estate is her step son. She further stated that the petitioner was given one parcel of land measuring 3 acres by his father. The remaining parcel of land was divided among the sons of the deceased.

5. Her evidence concerning the subdivision of the land into six portions measuring a ¼ an acre each is similar to that of the protestor in terms of distribution. When her deceased husband went to transfer the six portions of land into the names of the beneficiaries, he found that the petitioner and her son Enos Muriithi had cautioned those six portions, because they were not happy with the distribution. Thereafter the deceased died without effecting the transfers of the six portions to their beneficiaries.

6. Bernard Njeru Kinyua (R W 1) gave evidence opposing the protest. According to him, their deceased father had subdivided his land into two portions with each of his two wives getting one portion. It is also his evidence that the protestor and his mother were opposed to this mode of distribution. According to him, he was not aware that their father had adopted the grandchildren.

7. When he contacted the protestor with a view to agreeing on the mode of distribution and the filing of the succession cause in the Runyenjes magisterial court, the protestor refused to co-operate. He went ahead and unilaterally filed the succession cause and distributed the land in dispute as follows:

1. L. P KYENI/MUFU/ 4547 to Joyce Miiro Njeru wholly

2. L.P KYENI/MUFU/4542 to Irene Wanja Njeru wholly

3. L. P KYEENI/MUFU/4545 to Irene Wanja Njeru wholly

4. L P KYENI/MUFU/4544 to Irene Wanja Njeru wholly

5. L P KYENI/MUFU/4546 to Joyce Miiro Njeru wholly

6. L P KYENI/MUFU/4543 to Irene Wanja Njeru wholly

8. It is to be noted that the petitioner/administrator had been given his portion of the land by the clan. According to him the land parcels in dispute were for the use of his father and his two wives. It is his further evidence that their deceased father developed the disputed land together with his two wives. In the course of time, the protestor and his sisters together with the grandchildren of the deceased denied the mother of the petitioner the usage of that land. The petitioner then asked his mother as to why she had been denied the usage of that land. She was unable to reply to his question. At that time his mother was normal and not senile and his father was still alive. He then asked his father as to why his mother was being denied the usage of part of the disputed land. According to him the father said that it was members of the second house that were denying his mother from using the land and not himself.

9. The petitioner's father told the petitioner that he wanted to subdivide his land because he was facing problems at home. The petitioner went further to state that he was going to subdivide the land into six portions which were registered in the name of his deceased father. After doing so his daughters and his wives started to bring problems, because he had not given them their shares. The petitioner's father called a meeting of all his sons in the year 2010 or 2011. The petitioner refused to attend because he also had his own problems. And finally the petitioner stated that his father told them that all his daughters were to inherit from their mothers. The protestor according to the petitioner disagreed with this subdivision of their father's land which is now in dispute between his wives. It is his evidence that the protestor preferred the land to be divided among his daughters and sons.

10. Thereafter his father was taken ill and he died. When the petitioner wanted to file the succession cause, the protestor refused to give him the death certificate of their father. That notwithstanding, he was able to file the succession cause using the burial permit.

11. The petitioner further states that he subdivided the land equally among Joyce Miiro (being his mother) and Irene Wanja (being the second wife of the deceased). According to him he only gave land to his mother and step mother and did not provide for the protestor and his sisters. He also stated categorically that he did not have the authority of his mother, the stepmother, his sisters and brothers to subdivide the disputed land.

12. Under cross-examination by the protestor, the petitioner stated that he had been given three acres of land by his clan during demarcation. He denied being given land by his father. He also stated that it was their father who sub-divided the land and gave it to his children. Furthermore, he stated that the protestor, his sisters and his mother refused to co-operate with their late father in the subdivision of the land.

13. The issues for determination in this case are as follows:

1. Which of the two versions is credible
2. Whether or not the deceased had subdivided his land before his death.
3. Who should bear the costs of this suit.

14. I have evaluated the entire evidence produced by the protestor and his witness and that of the petitioner. I find that the version of the protestor is credible. I therefore believe that before the deceased died he had subdivided his portion of land into six portions and given it to his beneficiaries as indicated in the foregoing paragraphs. I do not believe the evidence of the petitioner. He did not impress me as a truthful witness.

15. In the circumstances, I find that the protestor has made out a case to warrant an order in his favour being made. I therefore rule that the protestor's mode of distribution in terms of paragraph 2 above is hereby confirmed. Both the protestor and petitioner led evidence on the mode distribution. It is for this reason that the mode of distribution is confirmed. Additionally I find that the deceased had sub-divided and distributed his land before he died as stated by the protestor in his evidence.

16. As regards costs, each party will bear its own costs because this is a family dispute.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this 16th day of **FEBRUARY 2016**.

In the presence of the protestor and the petitioner.

Court clerk Mr Njue

**J.M. BWONWONGA**

**JUDGE**

**16.02.16**