



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. SUCCESSION CAUSE NO. 56 OF 2012

IN THE MATTER OF THE ESTATE OF CIATU GATUANYAKI (DECEASED)

ANGELINA KANINI CIATU.....RESPONDENT

VERSUS

VIDES MARIGU CIATU.....PROTESTOR/APPLICANT

RULING

1. This is a protest application by Vides Marigu Ciatu, against the respondent who is both her co-wife and administrator of the estate of their deceased husband. According to her, the respondent did not inform her that she was going to file a succession cause regarding the estate. She only came to learn of it after many years following its filing. Even then she learned of it from their chief, Joseph Nyaga. Thereafter the chief summoned both of them to his office. The respondent and her son did not go to his office. They were called for the third time and they still refused to turn up. As a result, the chief told the protestor to check the Runyenjes magisterial court records concerning this case. She was advised to file a succession cause. She then proceeded to file an application in that court. The respondent was summoned to attend court and it is at that point in time that that court transferred the case to High Court, because that court lacked monetary jurisdiction. That magisterial court's monetary jurisdiction did not exceed Shs 100, 00.
2. In the meantime the respondent told the protestor to move out of the suit land and re-locate to the land at Weru, which belonged to her son, Christopher Ndwiga. Her further evidence was that she had been staying on the suit land since she got married. It is also her evidence that the land which is occupied by Christopher Ndwiga was given to him by his father. She testified that she wants the suit land divided between her and the respondent.
3. Furthermore, she also testified that the clan elders adjudicated a dispute between her and the respondent in respect of the coffee plants. The outcome of that adjudication was that the protestor was awarded four hundred coffee plants while the respondent was awarded three hundred coffee plants. Additionally she also testified that she did not know why the clan elders did not subdivide the land. Furthermore, she also testified that she was satisfied with the decision of the clan elders in awarding her the four coffee plants. When she requested the respondent to subdivide the land, the respondent told her to go and reside at Weru with her son.
4. It is also her evidence that the clan elders refused to go and subdivide the suit land. She testified that they did so because they hate her. In particular, clan elders Akorino and Aquilino Ndwiga are the ones who hate the protestor. Aquilino Ndwiga is a son of the respondent.
5. The protestor called Njeru Mwangangi (PW 2). According to PW 2, the protestor is a member of their clan. It is his evidence that the two ladies should subdivide the land between themselves, which land belongs to their late husband. This witness denied being aware that the deceased had land in Kiringa (Weru), where Christopher Ndwiga lives. He also testified that he did not know that the land at Kiringa was registered in the name of Christopher Ndwiga because women were

- not allowed to own land.
6. The next witness called was Joseph Kinyua Kirogo (PW 3). He testified that the deceased was his uncle and that he only had one parcel of land where both wives lived. According to him, Christopher Ndwiga the son of the protestor lives at his grandfather's home at Kiringa. He does not know whether Christopher Ndwiga resides on his own parcel of land.
 7. The protestor (DW 1) testified that the suit land solely belongs to her. She testified that she is the first wife of the deceased and the protestor is the second wife. It is her evidence that the protestor found her living on the suit land, when she got married in that home. It is her evidence that her late husband bought land at Kiringa/Weru measuring 11 acres.
 8. It is her further evidence is that Christopher Ndwiga, the son of the protestor lives on the land that is situated at Kiringa/Weru. It is also her evidence that the protestor hid the title deed of the suit land where both of them reside. She testified that she did not know the reason as to why the protestor hid that title deed.
 9. Her further evidence is that the land at Kiringa/Weru was registered in the name of the son of PW 1, when he was three years old, because women were not allowed to own land. It is also her evidence that the land at Kiringa/Weru belongs to PW 1. She also testified that she did not discourage the husband from building a house for PW 1 at on the suit land at Kanja, because her deceased husband had not bought land for PW 1. It is for these reasons that she wants the protestor to move out of the suit land.
 10. The respondent called Gerald Mugo (DW 2) and Ephantus Mwaniki (DW 3) in support of her case.
 11. I have evaluated the entire evidence of the protestor and her witnesses and that of the respondent and her witnesses. The issue for determination is whether the protestor is entitled to a share in the suit land. The second issue is who should bear the costs of this cause.
 12. I find from the evidence that the protestor has failed to prove her case as required. I found her to be an untruthful witness. A number of instances show this clearly. It is her evidence that the clan elders hated her and yet they are the same clan elders who awarded her four hundred coffee plants against three hundred coffee plants that they awarded to the respondent. I also do not believe her evidence that she asked the clan elders to go and sub-divide the suit land and they refused to do so, because they hated her. It is strange that the clan elders were willing to adjudicate the dispute of the coffee plants between the two parties and yet decided not to arbitrate in the dispute concerning the suit land.
 13. Furthermore, I also do not believe her evidence that she did not know how his son Christopher Ndwiga, became the owner of the land at Kiringa/Weru. The evidence of the respondent in this regard is truthful and it is that the land at Weru was acquired by their husband, who then had it registered in the name of Christopher Ndwiga.
 14. The protestor's further evidence is that she did not ask her late husband as to why he decided to give the land at Kiringa/Weru to Christopher Ndwiga. I do not believe her evidence in this regard as well. I believe the evidence of the respondent that the land at Kiringa/Weru was bought for the protestor but was registered in the name of the protestor's son. I also believe her evidence that the land at Kiringa/Weru was to be shared between the protestor and her children.
 15. I believe the evidence of DW 2 that the clan elders told the protestor to go and live in her son's land at Kiringa/Weru and that explains why the clan elders found it unnecessary to arbitrate the issue of ownership between the protestor and the respondent. The reason being that there was no issue to be arbitrated upon.
 16. In the light of the foregoing evidence, I find that the protestor is not entitled to a share in the suit land. According to the summons for confirmation of grant by the respondent dated 5th October 2012, the following properties should be shared as follows:
 1. **Land parcel No. Kagaari/Weru/3644** to be registered in the name of Christopher Ndwiga Ciatu.
 2. Land parcel No. Kagaari/Kanja/350 to be registered in the name of Angelina Kanini Ciatu
 3. Plot no. 197 at Runyenjes to be registered in the name of Margaret Wanjuki Mwaniki
 4. East African Breweries Ltd shares to be jointly registered in the name of Angelina Kanini Ciatu and Vides Ciatu.
 5. Runyenjes Bar and Restaurant Company shares to be jointly registered in the names of Angelina Kanini and Vides Marigu Ciatu.

17. In this regard, it is important to point out that the mode of distribution in terms of Angelina Kanini Ciatu's affidavit in support of summons for confirmation of grant of the administration intestate dated 5th October 2012 is reasonable and fair and I do hereby approve of it.

18. The protest is hereby dismissed with no orders to cost.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 9th day of June **2016**

In the presence of Aquilino Ndwiga Ciatu on behalf of Angelina Kanini Ciatu and Vides Marigu Ciatu

Court clerk Njue

J.M. BWONWONGA

JUDGE

09/06/2016.