



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 74 OF 2003

IN THE MATTER OF THE ESTATE OF RUGIA MWITOGONYE (DECEASED)

SUSAN MUMBU PAUL.....PETITIONER (DECEASED)

AND

NELSON NJIRU RULIA.....APPLICANT /ADMINISTRATOR

VERSUS

MARY WAMBUI MUGO.....OBJECTOR

RULING

1. This is an application by Mary Wambui Mugo, who is the objector (Protestor) in this matter. She challenged the mode of distribution of the estate of Rugia Mwitogonye. It is her evidence that she is the wife of the deceased Morrison Mugo, who had been given 3 acres by his late father. Before the deceased died, he had filed a list in court in 1994 indicating how the property was to be distributed.

2. According to the affidavit evidence of the deceased, the objector was to get 3 acres of land out of the whole land, which consisted of 8 acres. Nelson Njiru, the petitioner was also to get 3 acres. Susan Mumbi, Josephine Wawira and Jane Wanjohi were to share 2 acres jointly. It is also her further evidence that the petitioner (Nelson Njiru) sold 1 acre which belonged to his sisters. He then proceeded to give 1 acre from the parcel of land owned by the objector, which she testified was done without her consent. Finally, she testified that the petitioner has continued to sell the suit land and has chased her from that land.

3. Under cross-examination, the objector admitted that there was a meeting in 1994 in which it was agreed that a succession cause be filed, which was attended by elders. She further testified under cross-examination that the mother of the petitioner maintained that the suit land should remain the way it had been distributed by their late father. She then closed her case.

4. In his evidence, the petitioner testified that he applied for confirmation of the grant in which he wanted to give the objector 2 acres, which she refused. They were then called by their late mother and all of them including the objector agreed to the mode of distribution as follows:

Morrison - 2 acres

Nelson - 3 acres

Phylis Muthoni - $\frac{3}{4}$ acres

Josephine Wawira – $\frac{3}{4}$ acres

Their late mother was left with $\frac{3}{4}$ acres.

5. The petitioner further testified that all the beneficiaries were asked to contribute money so that they could subdivide the suit land and the protestor was given the responsibility to get the documents that had been filed in court. The petitioner testified that the objector said that she did not have any money to contribute. The petitioner denied having sold any piece of the suit land. He also testified that it was not his responsibility to give the objector the 3 acres that she wanted, because the sharing and distribution of the suit land was done by their late mother.

6. Under cross-examination, he testified that his sisters were given their shares of the suit land by their late mother. He further testified that his late mother gave him 3 acres of the suit land, because he used to take care of her. He closed his evidence by testifying that the objector was given 2 acres and that if she had wanted 1 acre of the petitioner's land, she should have claimed that from their late mother.

7. The petitioner called John Mwaniki Njue (DW 2) who knew the family of the deceased as village mates and as members of the Nderi clan. It was his evidence that the beneficiaries including the petitioner and objector had not agreed on the mode of the distribution of the suit property. He further testified that the mother of the petitioner is the one who called him to the meeting, which included the entire family, and the sub-area. It is his evidence that the suit land is reference No. Ngandori/Nguviu/168.

8. It is also his evidence that it is the mother of the petitioner who subdivided the 8 acres suit land in the following manner. She gave Nelson Njiru (petitioner) 3 acres. She then gave Mary Wambui (the objector) 2 acres. And finally, she gave $\frac{3}{4}$ acres to her daughters Philis Ikamba, Josephine Wawira and Wanjovi. They asked the mother of the petitioner as to why she was giving some beneficiaries more acreage of the suit land while others were receiving less. The response of the petitioner's mother was that it is the petitioner who used to take care of her. He also testified that no one complained in that family meeting and that no minutes were taken.

9. Under cross-examination, he confirmed that the objector was only given 2 acres and not 3 acres. He confirmed that the objector attended that meeting.

10. I have considered the entire evidence of the objector and that of the petitioner together with his witness (DW 2). I find that the main issue for determination is whether the mother of the petitioner distributed the suit land by giving the petitioner 3 acres and the objector 2 acres. I believe the evidence of the petitioner and his witness that the mother of the petitioner gave the petitioner 3 acres. The reason for doing so was that it is the petitioner who was taking care of her. It is for this reason that the petitioner was given 3 acres and not 2. I also find that the objector was provided for by being given 2 acres. I find that the subdivision and the distribution of the suit land was fair and just. I do not believe the evidence of the objector that the mother of the petitioner gave her 3 acres. I find the evidence of the petitioner and his witness (DW 2) consistent, cogent and credible.

11. In the circumstances, I dismiss the protest of the objector with no orders as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **14th** day of **DECEMBER 2016**

In the presence of both the petitioner and the respondent.

Court clerk Njue

J.M. BWONWONGA

JUDGE

14.12.16