



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 551 OF 2009

N THE MATTER OF THE ESTATE OF NYAGA ERASTO KIMUVIA (DECEASED)

FRANCIS NJIRU NYAGA.....1ST PROTESTOR

JOHN GICOVI.....2ND PROTESTOR

VERSUS

JEMIMAH WARUGURU.....PETITIONER/RESPONDENT

R U L I N G

The two protestors herein namely Francis Njiru Nyaga and John Gicovi are sons of the deceased and the petitioner herein. They are opposed to the suggested mode of distribution of the deceased's estate by the petitioner. They are claiming ½ acre to be shared by them jointly. And that the remaining portion should be shared among the rest of the beneficiaries.

In his evidence the 1st protestor denied having been bought two acres of land by the deceased. And the 2nd protestor is claiming a share because he took care of his late father when he was sick. He however admits having been given 2 acres of land by his late father.

The petitioner gave evidence and called two (2) witnesses. She said the deceased gave each of the protestors 2 acres of land. She was left with 1½ acres which she intends to share with her 5 daughters. Her two witnesses confirmed that the two protestors were given land by the deceased.

There is no dispute that the deceased herein died on 24/8/2005 leaving behind a widow (petitioner) and seven (7) children. The children comprise of two (2) sons (Protestors) and five (5) daughters. The Chief's letter dated 23/9/2009 confirms this. Letters of grant of administration were issued to the Petitioner without any objection being raised by any of the beneficiaries.

The Petitioner then filed summons for confirmation of grant. The only asset in the estate is land parcel No. NGANDORI/KIRIGI/4469 measuring 0.77 Hectares. Her proposed mode of distribution is in paragraph 5 of her supporting affidavit. She proposes to take ½ acre while her five (5) daughters share the remaining portion which is about one (1) acre. The protestors are opposed to this.

The 1st Protestor denied being given any land as stated by the Petitioner and her two witnesses. Instead he said he had bought the two acres of land in 1964 from Nyaga Ngugi at Shs.1,735/=. There was nothing as easy as calling the said Nyaga Ngugi or any other person who witnessed the said sale as his witness. He did not do so. He however does not deny that he owns two acres of land.

The 2nd protestor readily admitted having been given two (2) acres of land by their father. All he wants

is something more. There was no way the deceased would have given the 2nd protesor land and not given to the 1st protestor. The petitioner impressed me as a truthful and reliable witness. Her two witnesses corroborated her evidence. Her argument is that since the two protestors herein were given land by their father, she should give the remaining to her daughters. She is only taking ½ acre for herself while the five (5) daughters share one acre. Had she been greedy she could have taken the whole portion for herself.

From the evidence it is clear that the two protestors received two (2) acres of land each from their late father. They should be satisfied with that and leave the 1½ acres for the other members of the family to share.

I therefore find that the protests lack in merit and I dismiss them. I do confirm the grant in terms of paragraph 5 of the affidavit in support of the summons for confirmation filed on 16th May 2011. Each party to bear his/her own costs. Right of appeal explained.

DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF MARCH 2014.

H.I. ONG'UDI

J U D G E

In the presence of:-

Petitioner/Respondent

protestors

Njue CC