



**REPUBLIC OF KENYA**

**High Court at Embu**

**Succession Cause 183 of 2004**

**ELIAS NJOGU.....PROTESTOR**

**VERSUS**

**GICHOBI MBORA.....PETITIONER**

**RULING**

The administrator herein GICHOBI MBORA filed summons for confirmation of the grant issued on 3/9/2010. He indicated in paragraph 5 of the affidavit in support of the summons how he wishes to distribute his father's estate. One Elias Mbogo filed an affidavit of protest saying he was a son of the deceased GATUMU KAMANJA and his mother was Agnes Wambogo wife of GATUMU KAMANJA. He therefore lay claim to the estate of Gatumu Kamanja.

The matter proceeded for hearing by way of *viva voce* evidence. The protestor testified that the deceased married his mother (Agnes Wambogo M<sup>o</sup>Nthama) vide a wedding. He further stated that his mother is married to one Nguu with whom she has 4 other children viz

- Wambeti Nguu
- Wanjira Nguu
- Zacharia Njue
- Wangui Nguu

Though he did not carry his identity card to Court, he assured the Court that the names in the said identity card read Elias Njogu Nguu. He also confirmed that his father is Nguu and is not related to the deceased herein. The said Nguu has land. He also admitted that the deceased had transferred land to his sons before he died. And that he was living on his own land.

The petitioner/respondent denied that the protestor was a son of the deceased. That their family name is Mbora while that of the protestor's family is Nguu. The deceased had divided the land into 5 portions for them. He produced minutes for the consent to subdivide. He asked the court to confirm the grant as per his proposal.

The protestor had been the petitioner herein and had been issued with letters of administration of grant. The same was revoked on 30/9/2010 and a fresh grant issued to the respondent Gichobi Mbora. When Gichobi Mbora filed summons for confirmation the protestor herein Elias Njogu filed an affidavit of protest.

Both parties have been heard over the protest. The issue for determination is just one. And it is

whether the protestor is a son of the deceased or not. During the hearing of the protest it came out clearly through the protestor's own evidence that the deceased herein was not his father. He had alluded to several documents but produced none of them.

He deliberately failed to avail his identity card but was sincere enough to tell the Court that the names appearing in his identity card were Elias Njogu Nguu. And that Nguu who was his mother's husband was his father. And that the said Nguu had land which he could claim.

It also transpired in the course of the hearing that the deceased had actually subdivided his land to his sons and the undivided portion was for the daughters. In the re-exam of the protestor by his counsel to confirm who his biological father was he stated

***“Nguu Kamanja is not my biological father. My biological father is Nguu Kamanja.”***

I found this protestor to be a very interesting witness. He knew the truth but has punished the deceased's family for nothing. The mere fact that his mother had wedded with the deceased was not proof that he was the deceased's son. Interesting enough is paragraph 9 of his affidavit where in his proposal of the distribution he states

- (a) ***LR Ngandori/Nguviu/2779 to be inherited by Jane Wanjira wholly.***
- (b) ***LR Ngandori/Nguviu/2781 to be inherited by Jane Wanjira wholly.***
- (c) ***Ngandori/Nguviu/2783 to be inherited by Wambeti Mbora wholly.***

All these three supposed to be inheritors i.e. Njogu, Wambeti and Wanjira are children of Mr. Nguu. No wonder Mr. Njiru for the protestor ended by saying *“It has been a very pathetic hearing today”*.

I find the protest to have no merit and to be an abuse of the court process. It is dismissed with costs. The summons for confirmation is allowed in terms of paragraph 5 of the supporting affidavit. A certificate to issue to that effect.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF APRIL 2013.**

**H.I. ONG’UDI**

**J U D G E**

**In the presence of:-  
Mrs. Njuguna for Fatuma for Petitioner  
Both parties  
Njue CC**