



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 208 OF 2007**

**IN THE MATTER OF ESTATE OF NJOGU NDOMO alias NJOGU S/O  
NDOMO.....DECEASED**

**AND**

**EUSTACE NDOMO NJOGU.....**

**.....PETITIONER**

**VERSUS**

**NELLY WAKIURU NJOGU.....**

**.....PROTESTOR**

**RULING**

Letters of administration intestate in respect of the estate of Njogu Ndomo alias Njogu s/o Ndomo, deceased was granted to Eustace Ndomo Njogu, hereinafter referred to as the Petitioner, on 25<sup>th</sup> June 2009. The Petitioner has now applied to have the grant confirmed vide the summons dated 15<sup>th</sup> February 2010. Nelly Wakiuru Njogu, hereinafter referred to as the Protestor file an affidavit of protest to oppose the summons for confirmation of grant. It is important to note that the Petitioner filed three affidavits in support of the summons. This court gave directions to the effect that the dispute be disposed of by affidavit evidence and written submissions.

I have considered the grounds stated on the face of the summons for confirmation of grant and the facts deponed in the affidavits filed for and against the summons. I have further considered the written submissions filed by both sides. The Protestor has stated that she is the deceased's daughter hence a beneficiary to her estate while the Petitioner is the deceased's son. The Protestor's main objection is that she was excluded by the Petitioner from sharing in equal measure the parcel of land known as L.R. NO. MUHITO/THIHA/47. The Protestor claimed she is in occupation of a portion of the land and that she has carried out extensive developments on it. She stated that she has even put up a permanent building. She avers that it will be unfair if she is not given a share of the aforesaid land. She proposed for the sharing of the other assets in equal portions. The Petitioner on his part stated that the deceased had expressed his wish on the manner of sharing the property while he was alive he gave the example of the deceased transferring L.R. Muhito/Thiha/56 and L.R. Muhito/Thiha/85 to his sons Eustace Ndomo and Donald Wanjau respectively inter vivos. The Petitioner claimed that the deceased had expressed his wish to have the Petitioner inherit Parcels L.R. No. Ngobit/Supuko Block III/376 and L.R. No. Muhito/Thiha/47. He claimed the deceased had completed filling the application forms for Land Control Board consent but he passed away before getting consent. The Petitioner claimed that the deceased's wishes were brought to the attention of the family members including the Protestor. The Petitioner further averred that the deceased further expressed his wish that the property which had remained should be inherited by Donald Wanjau. In a nutshell the Petitioner avers that the deceased had bequeath his property to his sons by an oral will and that he had also provided for the Protestor in the sharing of the estate. According to the Petitioner it was the wish of the deceased that the Protestor inherits L.R. No. Ngobit/Supuko Block III/376 whereas Erastus Kamundia Njogu gets L.R. No. Muhito/Thiha/47. It is said the wishes of the deceased were brought to the attention of all the family members including the Protestor. It is the Petitioner's submission that the deceased made an oral will which manifests itself in the annexures attached to the Petitioner's further affidavit. There is no dispute that the deceased was survived by Charity Wangari Njogu (widow), Eustace Ndomo Njogu (Son Petitioner), Nelly Wakiuru Njogu (daughter),

Erastus Kamundia Njogu (Son) and Donald Wanjau Njogu (son). The Petitioner is of the view that his mode of distribution is in accordance with to the wishes of the deceased. I have carefully looked at the documents annexed to the further supporting affidavit of the Petitioner . The deceased died on 25<sup>th</sup> January 2005. Annexed to the further affidavit of the Petitioner is a letter dated 22<sup>nd</sup> November 2004 allegedly written by the Protestor in which she complained to the Land Board and area D.O. that there were attempts to disinherit her. The Protestor gave the particulars of the distribution undertaken by the deceased. By that time the deceased was alive. The Protestor has not attacked the veracity of that document despite having been served with the aforesaid affidavit. It would appear she was not happy with what the deceased had given her. In the aforesaid letter she stated that at her age she did not have resources to settle and re-claim the semi-arid land that is in Kieni. There are also two applications for consent of land control board annexed to the aforesaid affidavit. Those forms were alleged to have been filled and signed by the deceased. The aforesaid allegations were not controverted too by the Protestor. From the aforesaid averments and annexures I am convinced that the deceased had expressed his wishes while he was still alive to his children on how he wished his property to be shared. The Protestor has not denied that assertion. The Protestor's contention is that she was given some property she may not have liked. In my view, I do not think the deceased's wishes can qualify to be regarded as an oral will. The deceased simply made his wishes known to his children and what remains is for those wishes to be actualized. I am convinced the affidavit evidence of the Petitioner is consistent and remain uncontroverted. I am satisfied the deceased's wishes on the distribution of his property is correctly represented by the mode of distribution proposed by the Petitioner. I am unable to agree with the Protestor's evidence. In the end the Protest is ordered dismissed and the grant is confirmed in terms of the Petitioner's summons for confirmation of grant dated 15<sup>th</sup>

February 2010. Each party to meet his or her own costs.

Dated and delivered this 25<sup>th</sup> day of November 2010.

J.K. SERGON

JUDGE

In open court in the presence of Nelly Wakiuru Njogu/Protestor. No appearance for Kamwenji.