



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Succession Cause 800 of 2002

IN THE MATTER OF THE ESTATE OF SIMON NJOROGE KATHIERI -DSD

AND

CYRUS MUTHEE SIMON NJOROGE.....PETITIONER

VERSUS

EPHANTUS NYAGA NJOROGE.....PROTESTER

RULING

The two administrators applied for confirmation of grant they held in the estate of Njoroge Kathieri deceased.

On the first day of November 2006 one Ephantus Nyaga Njoroge filed an affidavit of protest against the confirmation of that grant on the ground that he was not included as beneficiary though he was the eldest son of the deceased and he was not informed when the case was filed.

The parties gave oral evidence in open court. Note that the protester is included in the list of survivors but he is not included in the distribution. However he admitted he held land from his clan. And now he claims distribution from his fathers land like other beneficiaries. He testified that his brother Cyrus had been given 0.6. ha. Plot and his 4 acres given to him was for the work he was doing for the clan. He also confirmed that his brother Sospeter is entitled to 3 acres and he is entitled to one (1) acre. In reply the administrator admitted that he distributed no land to his elder brother on the grand that their father deceased had left instructions on how the distribution of his land is to be done. However he did not prove existence of such instructions, he said his father did not leave any will.

DW2 was a relative of the family and Chairman of the clan. He disclosed that Simon Njoroge the petitioner was given 5 acres and Ephantus Nyaga 4 acres. The only people not given clan land were Cyrus and Sospeter Kariuki the two should share the father's land. Sospeter Kariuki Njoroge also gave evidence and stated that the deceased said he took 3 acres and that is what he had been allocated as his inheritance.

I have considered the evidence of the parties. It is not true that the protester was not included as a beneficiary. However he was left out in distribution because the administrator thought the deceased did not give him any inheritance and also that he held 4 acres of clan land. There is an independent witness who said he is a relative of the beneficiaries. He is Chairman of the clan and the Petitioner and the protester were each given land by the clan. And that the other two brothers Cyrus and Sospeter should inherit their father's land which was clan land. Sospeter has been given 3 acres of land and he is content.

The mother is now deceased therefore there is no life interest subsisting. The protest is hereby dismissed. The deceased land Ngandori/Kirigi/853 shall be shared equally by Cyrus Muthee and Sospeter Kariuki. The application for confirmation of grant is confirmed. Certificate shall issue with the distribution according to this ruling.

Dated this 14th February, 2008.

J. N. KHAMINWA

JUDGE

14/2/2008

Khaminwa – Judge

Njue – Clerk

Cyrus Muthee – present

Ephantus Nyaga – present

Read in open court.

J. N. KHAMINWA

JUDGE