



**In re Estate of Ephantus Njue Ben alias Ephantus Njue (Deceased) (Succession Cause 262 of 2004) [2024] KEHC 2226 (KLR) (6 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2226 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 262 OF 2004  
LM NJUGUNA, J  
MARCH 6, 2024**

**IN THE MATTER OF THE ESTATE OF EPHANTUS  
NJUE BEN ALIAS EPHANTUS NJUE (DECEASED)**

**BETWEEN**

**CHARLES NJUE BENSON ..... PROTESTOR**

**AND**

**DOROTHY MUTHONI MAINA ..... RESPONDENT**

**JUDGMENT**

1. The matter for determination is a protest dated 07<sup>th</sup> February 2023 and filed on 10<sup>th</sup> February 2023. The same is filed in objection of Summons for Confirmation of Grant dated 12<sup>th</sup> January 2023. The protestor disagrees with the mode of distribution proposed in the summons for confirmation of grant and he suggests that the property be distributed as follows:
  - i. Dorothy Maina, Catherine Wangiri and Rosaline Rwamba Njue, each  $\frac{1}{4}$  of an acre.
  - ii. Charles Njue Benson, James Nyaga and Moses Kariuki each  $\frac{1}{8}$  of an acre.
  - iii. With consideration that Beatrice Njoki is the only member of the family without a place she can call her own, she gets  $\frac{3}{8}$  of an acre and inherit the mothers homestead.
  - iv. The remaining  $\frac{1}{2}$  acre is for road reserve and costs for distribution and any proceeds from sale of the said land to be shared equally amongst the members of the family.
2. According to the summons for confirmation of grant, the mode of distribution is proposed to be as follows:
  - i. Land Parcel No. Ngandori/Kirigi/72 to be share equally between Charles Njue Benson and James Nyaga Njue



ii. Land Parcel No. Ngandori Kirigi/1006 to be shared as follows:

a. Dorothy Muthoni Maina

b. Catherine Wangiri Njue } to jointly get 0.20 Ha.

c. Beatrice Njoki Njue

d. Rosaline Rwamba Njue

e. Moses Kariuki Njue - to get 0.81 Ha

3. The respondent filed a reply to protest stating that the protest is an abuse of the court process and that the protestor did not inform the court that the deceased had already shown his sons their portions of his land before he died. That the proposed mode of distribution fronted by the respondent is as per the wishes of their deceased mother. That all the family members have signed the consent in support of the mode of distribution appearing on the summons for confirmation of grant. She urged the court to dismiss the protest and distribute the estate according to her proposed mode of distribution.
4. At the hearing of the protest, the court took viva voce evidence. PW1 was the protestor who stated that the property in question is no longer that of the deceased herein but it was distributed to the sons of the deceased through succession more than 20 years ago. That the property available for distribution herein is only the 2 acres left by his late mother Margaret Gicuku. That the respondent conducted the succession proceedings without involving all the members of the family and this is a sign of mischief on her part. That the respondent's proposed mode of distribution gives the protestor and his brothers land that they already own legally. He urged the court to go by the mode of distribution proposed in his protest. On cross-examination, he stated that there is a total of 7 siblings including the protestor and the respondent and that it is not true that their late mother's property was to be inherited by the daughters on the deceased.
5. PW2, James Nyaga Njue, stated that after the death of the deceased, a grant of letters of administration was issued to the late Margaret Gicuku, wife of the deceased and their mother. That the property title number Ngandori Kirigi/1006 was distributed to their late mother and their brother Moses Kariuki. That after the death of their mother, her portion of the land, which was 2 acres became the subject of succession proceedings and a grant of letters of administration was issued to the respondent herein in the estate of their mother. That the respondent was supposed to ensure that their mother's portion of the estate was distributed fairly amongst all her siblings but she has refused to oblige. That given the mode of distribution suggested, his sisters will own much bigger portions of land than the brothers
6. DW1 was the respondent, who stated that she is the administrator of the estate of the deceased who was the registered owner of property numbers Ngandori/Kirigi/72 and Ngandori/Kirigi/1006. That Ngandori/Kirigi/72 is jointly owned by PW1 and PW2 while Ngandori/Kirigi/1006 is jointly held by all the 4 daughters of the deceased in equal shares. That she disagrees with the protestor's mode of distribution since it will mean that the sons get more land than the daughters of the deceased. That they never agreed on how to distribute the estate of their late mother.



7. DW2, Catherine Wangiri Njue stated that Ngandori/Kirigi/72 is jointly owned by PW1 and PW2 while the 4 daughters of the deceased each has ½ acre in Ngandori/Kirigi/1006 and 2 acres of the same to be held by Moses Kariuki Njue, their brother. That she does not agree with the protestor’s proposed mode of distribution.
8. The parties indicated that they both did not wish to file written submissions.
9. The issue for determination herein is whether the protest is merited.
10. In the estate of the deceased herein, a grant for letters of administration was issued to the late Margaret Gicuku Njue on 10<sup>th</sup> February 2005 by this court. The same was confirmed and a certificate of confirmation of grant was issued on 01<sup>st</sup> December 2005. The distribution of the estate according to this grant was as follows: property number Ngandori/Kirigi/72 was to be jointly held by PW1 and PW2 in equal shares while Ngandori/Kirigi/1006 was to be shared between the late Margaret Gicuku Njue and Moses Kariuki.
11. The respondent herein filed summons dated 06<sup>th</sup> June 2022 for revocation of the grant on the grounds that the administrator died prior to satisfying the grant, thus rendering it inoperative. At the hearing of the application, all the beneficiaries of the estate were present in court and none of them objected to revocation of the said grant. Upon revocation, the respondent herein was appointed administrator of the estate of the deceased and was given 60 days within which to file summons for confirmation of the grant. This is the summons for confirmation of grant that was opposed through the protest herein.
12. The protestor herein stated that the sons of the deceased acquired their portion of the estate through the process of succession and that their portion of the property should not be part of the estate of the deceased herein. He referred to the grant of letters of administration that has been issued to the late Margaret Gicuku Njue, which grant has since been revoked. The effect of revocation of a grant is that the certificate of confirmation of grant also lapses and the process was ordered to begin afresh, with the respondent being appointed as administrator. This means that the distribution of the estate according to the certificate of confirmation of grant cannot be considered. In other words, following revocation of a grant, any beneficiary who was bequeathed a part of the estate of the deceased, has no valid legal claim over the estate since it is to be redistributed.
13. In the present case, the court ordered that the respondent files summons for confirmation of grant and the same was filed on time. The proposed distribution is similar to the one contained in the previous certificate of confirmation that was set aside, save for the portion of Ngandori/Kirigi/1006 belonging to the late Margaret Gicuku Njue and Moses Kariuki Njue. Throughout the evidence, there is no dispute as to the portion held by Moses Kariuki Njue but rather the portion held by the late Margaret Gicuku Njue.
14. It is the protestor’s argument that if this mode of distribution is to be considered, then the daughters will get portions that are larger than those belonging to the sons. This argument has no place in the laws of Kenya and so the mode of distribution proposed by the protestor is in itself offensive to the Constitution and Section 38 of the *Law of Succession Act*. Article 27(3) of the *Constitution* provides thus:
  - “(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”



15. This is an intestate estate and therefore, distribution is subject to Section 38 of the Law of Succession Act. It states:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

The deceased is not said to have been polygamous, neither is it argued that he has children who are minors. Therefore, the totality of provision cited hereinabove applies. Therefore, it is most fair and just to equally distribute the estate of the deceased amongst the children of the deceased.

16. From the available evidence, there is no contention as to the property Ngandori/Kirigi/72 which is held by Charles Njue Benson and James Nyaga. The portion of Ngandori/Kirigi/1006 held by Moses Kariuki Njue is also settled and nothing in the evidence stated otherwise. Therefore, it is my finding that the same remain to be held as such by the sons of the deceased. I also find that the remaining portion of Ngandori/Kirigi/1006 held by the late Margaret Gicuku Njue shall be held jointly in equal shares by all the 4 daughters of the deceased namely Dorothy Maina, Catherine Wangiri Njue, Rosaline Rwamba Njue and Beatrice Njoki.

17. Therefore, the protest lacks merit and it is hereby dismissed. A certificate of confirmation of grant to be issued distributing the estate of the deceased according to the mode provided in the summons for confirmation of grant dated 12<sup>th</sup> January 2023 and the supporting affidavit thereof.

18. There shall be no order as to costs.

19. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 06<sup>TH</sup> DAY OF MARCH, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the Protestor

..... for the Respondent

