



**Nyambati & another v Nyambati (Succession Cause 197 of 2013)  
[2024] KEHC 12127 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12127 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
SUCCESSION CAUSE 197 OF 2013  
TA ODERA, J  
OCTOBER 4, 2024**

**BETWEEN**

**ALFRED NYABERA NYAMBATI ..... 1<sup>ST</sup> PETITIONER**

**KENEDY OMWOYO NYAMBATI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**FLORA MONYENYE NYAMBATI ..... OBJECTOR**

**RULING**

**Introduction**

1. The Objector/Applicant filed summons for revocation of certificate of grant of administration issued to the Petitioners herein on 20<sup>th</sup> March, 2015 as well as an order for the cancellation of titles arising out of land parcel Nyaribari Masaba Bonyamasicho/902 registered in the name of her deceased father, Peter Nyambati Nyambati.
2. In support of her summons, the Objector averred that the Petitioners obtained the letters of administration in respect of the estate of the late Peter Nyambati Nyambati fraudulently by concealing material facts to the case to the extent that they did not disclose to the court that the deceased had more children including her. She deponed too that the petitioners proceeded with the instant succession cause without the knowledge and involvement of other beneficiaries particularly her. She reiterated that she was a daughter to the deceased and thus a beneficiary to the estate. She drew the attention of the court to the chief's letter that disclosed that fact.
3. In response to the summons, the 1<sup>st</sup> Petitioner through his replying affidavit dated 4<sup>th</sup> October, 2021, wherein denied the Objectors claim that he had failed to disclose all beneficiaries of the succession process of his late father's estate which comprised of land parcel Nyaribari Masaba Bonyamasicho/902. He deponed further that his late father had during his lifetime divided the said parcel of land into three portions amongst his three sons in the following manner;



- i. Alfred Nyabera Nyambati.....4.6 Acres
  - ii. Kennedy Omwoyo Nyambati.....4.6 Acres
  - iii. Isaac Mongeri Nyambati.....4.6 Acres
4. He stated too that the objector/Applicant never contested the above subdivision of the land by their father prior to his death. It was his disposition that upon the demise of their father, they with knowledge the objector applied for letters of Administration which they obtained in 2013 which were later confirmed in 2015 in manner in which the land had been apportioned by their father. He went on to state that a gazette was issued whereupon any person objecting the same was required to lodge an application within 30 days from the date thereof but the objector failed to lodge any objection despite the fact that she was fully aware of the succession process. He therefore contended that the Application was stale and filed in bad faith by an Applicant 9 years after conformation of grant. He claimed that the Applicant was a cheat having failed to disclose that the late father had during his lifetime allocated her land in Mulot within Bomet County. He thus urged the Court to dismiss the Application.
  5. On 25<sup>th</sup> July, 2023, this court referred the parties to the court annexed Mediation. On 19<sup>th</sup> October, 2023, the file was placed before this court for the adoption of a Partial Settlement Agreement dated 14<sup>th</sup> August, 2023. In the Partial Agreement the parties agreed that the Objector, was entitled to 2.0 Acres of the land comprising the deceased estate herein. However, the sole issue which remained unresolved was the location of the said entitlement to the Objector. While the objector wanted to remain on the “Emonga” which as per Kisii customary law is the land where the homestead a person lies and it is usually left for himself during sharing of property amongst his children. The objector stated that the said “Emonga” was left to her by her late father. The Petitioners want the objector moved to the upper side of the property which is far off from their father’s homestead.
  6. In order to determine the unresolved issue of where the portion the Objector is entitled to should be located, the court heard the testimonies of all the parties. During her testimony in chief, the objector testified that her father testified that her father divided his property into 4 portions and allocated the same to her and her three brothers. She stated too that her brothers were given portions where they constructed their homes and she was left to live in her parent’s homestead known as Emonga under the Kisii Customary law. The said Emonga has a house, a tea plantation and a small portion where she cultivates. She further stated that their father died in 1997 and their mother later died in 2010 and left her staying on that Emonga. She disclosed too that she has never been remarried and that she had been living with her parents all along.
  7. During cross-examination she stated that she was the only daughter her father gave land before he died in 1997. Regarding the land in Mullot she stated that, the same was bought by her late sister whose children later sold it to third parties. She disclosed that she no longer stays at her father’s homestead because the 1<sup>st</sup> Petitioner assaulted her and forced her out of the home in 2021. she stated that the land her brothers had offered her was far off and infertile. She told this court that despite having been assaulted and evicted from her parents’ homestead she normally sends laborers to go pick tea on her parent’s homestead. She disclosed that she has the key to the parent’s house. Also that the children of her late sister Josephine, live on the portion of land which her brothers are offering her. She insisted that her parents gave her the land she had been living on and thus her brother’s had no authority to move her elsewhere. She denied claims that she had intentions of selling the Emonga.
  8. The 2<sup>nd</sup> Petitioner, Kennedy Omwoyo Nyambati testified in support of the Objectors assertions that the portion of land where his parents used to live before they died (Emonga) was allocated to the objector. He denied the claims by the 1<sup>st</sup> Petitioner that he was the one who contributed to the



construction of their parents' house which was now being occupied by the objector. She stated that even though the Emonga was less than 2.0 acres, he was willing to have each of them lose some parts of their portion to ensure that the Objector's portion remains closer to where the Emonga was. He supported the objectors claim that she was assaulted and kicked out of their parents homestead his brother Isaac. He also affirmed that her sister was still ploughing on their father's land. He reiterated that they met as a family and resolved that the objector remains on their father's land.

9. The 1<sup>st</sup> Petitioner who was opposed to the Objectors assertions testified. He contended that the family went for the court annexed mediation and agreed that she be given 2.0 acres out of their father's land. He acknowledged that her sister proposed that she be given their parents homestead which according to her was not 2.0 acres. He therefore was of the view that she be given the portion that was on upper side of the land so that the same affects the three portions. He stated further that he had shared his property to all his sons. He also stated that he built the house worth Kshs 5, Million for her parents in his compound. and he will be forced to move the house if the objector gets the Emonga. He further testified that her late sister and her children were apportioned the upper part of the land and that is the land he proposed the objector to get.
10. On cross-examination, he stated that he did not have an issue with the objector getting 2 acres of his father's land though he insisted that her share should be on the upper side. He admitted that he had not filed any surveyor's report to support his arguments and that the share of the objector was not factored in the succession process. He decried that if the court insisted that her sister be allocated the land where her parents used to stay then his rights would be violated. He stated that he was not in agreement with the Constitution that a girl child was entitled to inherit land from their parents.
11. Dw2 Isaac Mongeri, Nyambati, testified in support of the 1<sup>st</sup> Petitioner's position. He contended that as a family they resolved that their sister be given 2 acres of land to be carved off from the upper part of their father's land part of the land which each brother would contribute to. He indicated that the lower part was smaller and if the objector gets the same their respective portions would be divided into two. He said that no one lives on the Emonga and that the house where their parents used to live is in his brother's (the 1<sup>st</sup> Petitioner) compound. He said that the 1<sup>st</sup> petitioner is the one who built that house for their parents. He stated that his father shared his land amongst his sons before his demise even though he owned up that he was not present when all this happened.
12. On cross-examination, he stated that he had no issue with Flora getting 2 acres of his father's land. He disclosed that he had been sued at Keroka over the said parcel of land. He reiterated that he was opposed into the proposal of the Objector because it will divide their land into two. He yielded that the objector used to live and even plough on her father's land homestead (Emonga). He stated further that she left the land upon the death of their mother but denied chasing her from the land. He yielded too that the house was locked by Flora and that he has never entered the house since Flora left. He testified that if she moves to the place, he and the 1<sup>st</sup> Petitioner were proposing that she will have to build a new house at her own cost.

### **Analysis And Determination**

13. In the determination of this dispute it is in order for me to reiterate that the issue as whether the objector was entitled to a share of the estate of his father was determined during the court annexed mediation wherein the parties agreed to allocate to her 2.0 acres of the land. The only issue is the location of the 2.0 acres. The objector and the 2<sup>nd</sup> Petitioner on one hand held the position that the objector was entitled to 2 acres of land which was their late parents' house for reasons that is where she used to stay before she was assaulted by the 1<sup>st</sup> Petitioner in 2021 and moved out. The 1<sup>st</sup> Petitioner and



Isaac on the other hand were of the view that the objector should move to the upper part of the land given that their parents' home is on the 1<sup>st</sup> Petitioner's land.

14. During the hearing of the dispute, it became apparent in the testimonies of the parties in the dispute that prior to and after the death of their parents, the objector who has never been married lived in the house of the parent's until she was forced to move out by the 1<sup>st</sup> Petitioner. It has also emerged that the objector was ploughing and picking tea from the parent's land, before she was forced out of the home and even thereafter. The reasons the 1<sup>st</sup> Petitioner and Isaac advanced to support their claim of moving their sister out of their father's homestead are that, the parent's house was constructed by the 1<sup>st</sup> Petitioner on his own land and that the 1<sup>st</sup> Petitioner is likely going to be affected since his land would have to be divided into two. They also claimed that the upper part will be favorable because the same is bigger curving 2 acres from the lower side would substantially affect all of their shares.
15. However, the Objector in testimony disclosed the upper part was already being occupied by the children of their late sister whom the Petitioners had apparently not included in the succession cause. This assertion was supported by the 1<sup>st</sup> Petitioner who stated that; "my late sister and her children were apportioned the upper part of the land that is where I propose that the objector gets" It is thus clear that the said upper portion is not free for distribution.
16. It is shocking to say the least that 1<sup>st</sup> Petitioner and Isaac would want to force out their sister from the house and portion she had been staying during the lifetime of their father and stop enjoying the fruits of the farm she had been tilling and move her to a portion that is already occupied by the children of their late sister whom they also ignored in the succession process.
17. It is clear that 1<sup>st</sup> petitioner and Isaac want the objector out of the Emonga because they believe that as a daughter she is not entitled to inherit and wants it for themselves.
18. Article 27 of the [Constitution](#) provides for equality and freedom from discrimination as follows:
  - (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
  - (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
  - (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
  - (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
  - (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4). Article 3 of the [Constitution](#) of Kenya enjoins every person in Kenya to respect, uphold and defend this [Constitution](#) of Kenya. The [law of succession Act](#) does not discriminate the children of a deceased on the grounds of gender and all children of a deceased are thus equal before the law.
19. The proposal by the 1<sup>st</sup> petitioner and Isaac will violate the constitutional rights and freedom of the objector against non- discrimination on grounds of gender.
20. In any event, If the deceased wanted objector to settle elsewhere he would have settled her as he did with the sons. The objector is entitled to inherit the "Emonga" where she was living with her parents until their demise.



## **Conclusion**

21. In conclusion the therefore, it is in the interest of Justice that this court orders that:

22.

- a. The objector is entitled to inherit 2.0 acres out of land parcel Nyaribari. /Masaba/ Bonyamasicho /902 including of the homestead of the deceased otherwise known as “Emonga” under Kisii Customary Law.
- b. The certificate of confirmed grant issued herein on 20.3.2015 is hereby revoked.
- c. Fresh summons for confirmation and the proposed mode of distribution be filed and served by the administrators within 14 days from today.
- d. This being a family matter each party to bear its own costs.
- e. Mention on 25.11.24.

It's so ordered.

**T.A. ODERA**

**JUDGE**

**4.10.24**

**DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:**

Miss Chepkorir - for Objector /Applicant

Wesonga – For Petitioners

Court Assistant- Oigo

