

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 616 OF 2001

IN THE MATTER OF THE ESTATE OF JOSEPH NJUKI MWANIKI (DECEASED)

RULING

1. For hearing before court is an affidavit of protest to the confirmed grant filed by **David Mwaura Mwaniki, Isaack Mwaura Mwaniki, Lucy Wanjeri Kangethe, Boniface Kamau Mwaniki, Joseph Kamau Mwaniki, Paul Nderi Mwaniki, Nancy Wangui Mungai, & Margaret Mukuhi Mwaniki** all step brothers and sisters of the deceased herein **Joseph Njuki Mwaniki**, who was survived by **Teresia Mwaniki, widow, Pauline Mwaniki, Robert Mwaniki, Nancy Mwaniki, Antony Mwaniki & Charles Mwaniki**

2. The Protestors claim 1/3 share of one property amongst the listed properties of the deceased being **L.R. No. Naivasha/Mwicingiri Block 1/38**, stating that it is their home as they have lived on it over the years, since their childhood and their kin have been buried on the portion the same, and that they make their claim as beneficiaries of the estate. They have also raised a claim of adverse possession over the same due to their longtime occupation. They allege to have moved to the said land in 1979.

3. The Administrators of the estate of the deceased object to the claim by stating that the property in question belongs and is registered in the name of the deceased; further no kin of the protestors as alleged is buried on the said land as the mother and brother of the Protestors are not buried on the suit property save for Naftali Mwaniki Mwaura a father to the deceased and the Protestors.

4. The administrators further informed the court that the said Naftali Mwaniki Mwaura was survived by three widows, the deceased was from the 1st house whereas the protestors belong to the third house.

5. Further, the deceased acquired the said land in 1965 and was registered as owner in 1985 and allowed his father Naftali Mwaniki Mwaura and the mother Zipporah Muthoni both deceased to occupy the same property, and when the deceased parents died, both were buried on their son's property.

6. From the onset this court must state that it cannot entertain any claim of adverse possession as the same is a civil claim that can only be pursued at the Land & Environment Court. The Law of Succession's jurisdiction is certainly limited. The claim of adverse possession if any must be pursued in the court with jurisdiction.

7. The Protestors alleged that the deceased fraudulently registered the land in his name. However, no evidence was adduced nor any details of the alleged fraud brought before the court.

8. The claim that the Protestors' deceased father is a co-owner with 1/3 interest was not proved either. The court was not told how the Protestors or their father acquired 1/3 interest in the suit premises. He who alleges must prove.

9. The court does agree with the Administrators that use of land perse based on the goodwill of the owner does not confer one a right to claim as a beneficiary. Indeed, the picture produced as an exhibit in support of the protestors claim has some two houses that are dilapidated and do not support claim of recent occupation as alleged.

10. The protestors have failed to prove their claim as beneficiaries of the estate of the deceased herein and therefore the protest is dismissed with Costs to the Administrators.

DELIVERED AND SIGNED AT NAIROBI THIS 10TH DAY OF JUNE, 2021.

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ALI ARONI

JUDGE