



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSES NO. 569 OF 2006

In the matter of the Estate of NJERU MBIRI Alias NJEGA MBIRI (Deceased)

PATRICK KIURA NJERU.....APPLICANT

V E R S U S

MADRINE GICUGU IRERI.....RESPONDENT

R U L I N G

1. In his application dated 3/06/2015, the applicant Patrick Kiura seeks for orders that the Deputy Registrar be authorized to execute all the necessary documents to effect the sub-division and transmission to the beneficiaries of their shares in LR. Ngandori/Kirigi/1963 and Ngandori/Kirigi/1618.
2. The applicant states that he is a beneficiary in the estate of his late father, Njeru Mbiri alias Njega Mbiri. The administrator of the estate Madrine Gicugu Ireri is a daughter in law to the deceased. She is also a beneficiary together with the applicant and one David Njururi another son of the deceased.
3. The grant was amended on 2/02/2007 with the share of the administrator/beneficiary Josphat Ireri Njeru being taken by his widow Madrine Gicugu Ireri who was substituted as administrator.
4. The distribution was done in equal shares to the three beneficiaries as follows:-
 - (a) LR. Ngandori/Kirigi /1963 - to be shared as follows:-
 - (1) Madrine Gicugu Ireri - 1 acre
 - (2) Patrick Kiura Njeru - 1 acre
 - (3) David Njururi Njeru - 1 acre
 - (b) LR. Ngandori/Kirigi/1618 - to be shared as follows:-
 - (1) Madrine Gicugu Ireri - 1.66 acres
 - (2) Patrick Kiura Njeru - 1.66 acres
 - (3) David Njururi Njeru - 1.66 acres
5. Each of the parties were satisfied with their shares in the grant at the time of the confirmation and the amendment of the grant.
6. However, one of the beneficiaries Madrine Gicugu Ireri complained that her land on the ground was smaller than what the grant indicated. It measures $\frac{3}{4}$ of an acre instead of one (1) acre. The respondent said that the other two beneficiaries got more acreage than she did. For this reason, the respondent refused to implement the grant which led to the applicant filing this application.
7. This was followed by the parties recording a consent before Bwonwonga, J. who was hearing the case on 19/12/2016 as follows:-

That the surveyor be and is hereby allowed to survey L.R. Ngandori/Kirigi/1963 and Ngandori/Kirigi/1618.

8. The surveyor prepared and filed his report dated 16/01/2017 in which he explained how the two land parcels were surveyed and gave his recommendation to the court.

9. The record shows that in 1997 one Josphat Ileri Njeru filed Succession Cause No. 184 of 1997 for the estate of his late father Njega Mbiri in Embu Principal Magistrate's court. The case was finalized by confirmation of grant on 27/04/1998.

10. The assets of the deceased were distributed between his three sons as follows:-

(a) LR. Ngandori/Kirigi /1963 - to be shared as follows:-

(1) Josphat Ileri Njeru - 1 acre

(2) Patrick Kiura Njeru - 1 acre

(3) David Njururi Njeru - 1 acre

(b) LR. Ngandori/Kirigi/1618 - to be shared as follows:-

(1) Josphat Ileri Njeru - 1.66 acres

(2) Patrick Kiura Njeru - 1.66 acres

(3) David Njururi Njeru - 1.66 acres

11. The file was sent to the High Court where this case file No. HC Succession Cause No. 569 of 2006 was opened. The respondent in this application Madrine Gicugu Ileri in her capacity as the wife of Josphat Ileri Njeru was substituted as the administrator on 2/08/2006. Josphat had passed on before implementing the grant.

12. The respondent stepped in the shoes of her late husband and it was agreed that she would take his share in the amended grant dated 2/02/2007. The applicant and his brother David Njururi's shares remained as they were in the original grant.

13. The administrator (now respondent) failed or neglected to execute the necessary documents to facilitate transmission. As I have said earlier, this application was filed by Patrick Kiura Njeru to break the stalemate.

14. According to the report of the District Surveyor D.W Gicheru, the two parcels of land of the deceased were sub-divided in the year 2001 in pursuant of the original grant creating new parcels as follows:-

Ngandori/Kirigi/1618 - Ngandori/Kirigi/7027 – 0.70 Ha.

- Ngandori/Kirigi/7028 – 0.62 Ha.

- Ngandori/Kirigi/7029 – 0.62 Ha.

Ngandori/Kirigi/1963 - Ngandori/Kirigi/7030 – 0.32 Ha.

- Ngandori/Kirigi/7031 – 0.44 Ha.

- Ngandori/Kirigi/7032 – 0.40 Ha.

15. The registers of the LR. Ngandori/Kirigi/1963 and 1618 were closed on sub-division.

16. The respondent/administrator transferred to herself by way of transmission LR. No.7027 measuring 0.70 ha. Which she sub-divided into two parcels L.R. Ngandori/ Kirigi/8673 and 8674. She sold the parcels in 2009 to two different purchasers one of them being the Anglican Diocese of Embu Development Company who bought LR. 8673. The other buyer James N. Richard transferred his parcel in 2010 L.R. 8674.

17. The respondent also transferred to herself through transmission L.R. Ngandori/Kirigi/7030 in 2009. This is the parcel that the respondent is complaining is smaller than that of the applicant.

18. The surveyor's report states that the surveyor who went to the ground did not sub-divide the two land parcels in equal shares as per the grant. However, the respondent who got $\frac{3}{4}$ acre in L.R. Ngandori/Kirigi/1963 was compensated with a bigger share of 0.70 ha. equivalent to $1\frac{1}{4}$ acres in L.R. Ngandori/Kirigi/1618. This puts the respondent in almost equal footing with the applicant who got a bigger share from Ngandori/Kirigi/1963.

19. The surveyor sends a word of caution in his recommendation that if the sub-division parcel titles were to be cancelled and a repeat done as per the grant, the purchasers in good faith brought in by the respondent would be affected in the new order. The recommendation is that

the subdivision be retained since there is no major difference between the sizes of the shares of the parties after sub-division.

20. At the time, the respondent rushed to transfer the parcels L.R. Ngandori/Kirigi/7027 and 7030 to herself, she was aware of the sizes of the said parcels as the administrator. If the respondent was aggrieved, she ought to have applied to the court to direct that the sub-division be rectified before transfer through transmission was done in favour of the beneficiaries. This was not done. Instead the applicant took her shares in transmission and refused to sign for the other beneficiaries.

21. From the surveyor's report, none of the three beneficiaries has been disadvantaged in way of the sizes of their shares. For what the respondent lost in L.R. 1963, she was compensated with an equivalent share in L.R. 1618. The difference of approximately 0.10 ha. was added to the respondent putting her on equal footing with the applicant. Out of the three beneficiaries, it is only the respondent who is dissatisfied with the sub-division done in 2001.

22. I am of the considered opinion that no prejudice will be caused to any of the beneficiaries or to the purchasers in the event that the sub-division done in the year 2001 is retained.

23. To facilitate the transmission for the benefit of the two beneficiaries Patrick Kiura Njeru and David Njururi Njeru who have waited to get their shares for over 17 years, I hereby order that the grant be amended to conform with the sub-division done in 2001 as follows:-

(a) L.R. Ngandori/Kirigi/1618

Madrine Gicugu Ileri - L.R. 7027 – 0.70 Ha.

Patrick Kiura Njeru - L.R. 7028 – 0.62 Ha.

David Njururi Njeru - L.R. 7029 – 0.62 Ha.

(b) L.R. Ngandori/Kirigi/1963

Madrine Gicugu Ileri - L.R. 7030 – 0.32 Ha.

Patrick Kiura Njeru - L.R. 7031 – 0.44 Ha.

David Njururi Njeru - L.R. 7032 – 0.40 Ha.

24. It is not in dispute that the respondent/administrator failed in her legal duties of facilitating the transmission of the shares to the two beneficiaries in her mean style of effecting the transmission of her shares to herself. This conduct lays a good basis for the court to step in for execution of the necessary documents.

25. It is my considered view that this application if allowed will bring to an end the prolonged stalemate between the administrator and the two co-beneficiaries and therefore serve the interests of justice.

26. I find that the application date 3/06/2015 merited and allow it accordingly.

27. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF JULY, 2018.

F. MUCHEMI

J U D G E

In the presence of:-

Applicant

Respondent

David Njururi Njeru - beneficiary