



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 97 OF 2015**

**IN THE MATTER OF THE ESTATE OF AYUB MWANGI MBOGO – DECEASED**

**AND**

**MICHAEL NGANGA MUGO.....1ST PETITIONER**

**RUTH NJERI .....2ND PETITIONER**

**J U D G M E N T**

1. This court on 27/10/2016 issued a rectified certificate of confirmation of grant in which **Land parcel No. Makutano/Kapsara Block 2/Turbo Munyaka/87** was divided as hereunder among the deceased beneficiaries.

**1. Michael Nganga – 4 acres**

**2. Wallace Gikonyo – 4 acres**

**3. James Kamau – 4 acres**

**4. Ruth Njeri – 7 acres**

**5. John Njenga – 3 acres**

2. The applicant herein has filed the protest to the said grant arguing that she was left behind and being the daughter-in-law of the deceased she ought to have been given here share.

3. This court ordered the parties to submit their evidence orally. The objector testified and did not call any witness. Her evidence was to the effect that her late husband John Njenga was the first born son to the deceased. He died at Shimo la Tewa prison in Mombasa and was buried there. She however said that she had children with him and has been residing on the land.

4. She testified that earlier on she had a case at the Land Disputes Tribunal where she had sued the deceased. The tribunal's ruling was modified by the court by the court vide had case No. 64/1986 as per the annexure 1 to her supporting affidavit. According to her evidence she is entitled to the 5 acres in which the tribunal awarded her.

5. The Respondent/Administrator on his part agreed that the objector was indeed his sister-in-law and that she has all along been residing in the suit property. The portion she occupies measures 5 acres after being allotted by the land tribunal.

6. The Petitioner however argued that they gave her 3 acres and had it in the names of her later husband John Njenga. They did so, for the simple reason that she sued the deceased and had him incarcerated in jail. She should therefore feel the pain of transferring the land from her deceased husband to herself !

7. Having heard the parties herein, there is no doubt that the objector is the daughter -in-law to the deceased and that she has all along resided on the land with her children.

8. From the reading of the ruling of the court vide Kitale land case No 64/1986 it is clear that the court modified the elders award and ordered that;

**“(2)The applicant however is ordered to allow the respondent to use the 5 acres of the said plot No. 23 Munyaka to feed her 8 children who include the 2 she got with his son.”**

9. The same was not to inherit contrary to the objector's testimony.

10. The question therefore is what is her entitlement? Should she be given 3 acres, 5 acres or 4 acres? It appears that Michael, Wallace and James are brothers to the later John Njenga. Essentially, if John Njenga was alive perhaps he would have gotten equal share with the rest of his brothers.

11. In my view therefore, the 4 brothers should get equal shares. It appears that by giving the objector 3 acres and having it in the names of John Njenga, the administrators were seeking a revenge, namely to compensate for the tussle the objector had with the deceased.

12. More importantly, if the deceased wanted the objector to get 5 acres the court would have stated so categorically. The 5 acres she has occupied all along was purely for use and not inheritance.

13. Ruth Njeri was given 7 acres. It was clear that she came from the second house and there was no much objection to the same.

14. In my view, the 4 brothers ought to share their portions equally. They all have equal right to their father's estate. Their total acreage is 15 acres. They should each therefore get 3.75 acres.

15. In conclusion I do order that land parcel number **Makutano/Kapsara Block 2/Turbo Munayaka/87 measuring 7.285 Ha** be shared as hereunder;

**1. Michael Nganga – 3.75 Acres**

**2. Wallace Gikonyo – 3.75 Acres**

**3. James Kamau - 3.75 Acres**

**4. Dorcas Waithera – 3.75 Acres**

**5. Ruth Njenga – 7 Acres**

16. I find that there is no point having the name of the objector's husband who is deceased on the grant. Ruth Njeri shall hold her portion in trust for herself and her minors from their house.

17. The grant dated 27/10/2016 be rectified to reflect the above findings. Being a family dispute, each person shall meet their respective costs.

**Delivered, signed and dated at Kitale this 17<sup>th</sup> day of July 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**17/7/18**

**In the presence of:**

**Michael Nganga**

**Court Assistant - Kirong**

**Judgment read in open court.**