

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 19 OF 2014

**IN THE MATTER OF THE ESTATE OF ESBON NTHUNI alias HESBONE NTHUNI alias
HESPHON THUNI CIATHATHI alias HESPHON NJERU (DECEASED)**

JAMLICK NJIRU

THOMAS NJERU NTHUNI.....ADMINISTRATORS

VERSUS

ERASMUS IRERI NJERU.....PROTESTOR/OBJECTOR

RULING

1. This is an application brought by the protestor in respect of the distribution of the estate of the deceased. The protestor has filed a supporting affidavit dated 11th November 2015. According to him, the deceased was his step father and was the former chairman of the Nditi clan. He has also deponed that the deceased registered many parcels of land in his name as a trustee for the Nditi clan members (para. 3). He has further stated that the entire court proceedings which started in 1964 in Mbeere African Court were between the Nditi clan versus Mukera clan. It is his affidavit evidence that no one claimed personal interest in those proceedings.

2. Finally, it is the protestor's affidavit evidence that the land was shared out on the basis of the clans and not on an individual basis. That is in a nutshell the gist of his affidavit evidence.

3. Counsel for the protestor filed written submissions in support of the protestor's case. According to counsel, all parcels of land belonged to Nditi clan and all court cases were litigated by the clan through their representatives. Counsel submitted that the parcel of land claimed by the two administrators belonged to the clan and not to the deceased. Counsel has further submitted that the High Court and the Court of Appeal judgements gave the parcels of land to individuals instead of giving it to the clan.

4. The administrator/ respondents through Jamlick Njiru Nthuni filed a replying affidavit dated 17th March 2015 in opposition to the protest. He deponed that the estate in question belonged to his late father and further deponed that the objector is not a beneficiary or a relative of his deceased father. He annexed the Court of Appeal judgement in *Nicholas Njeru v The Honourable the Attorney General and 8 others, being Civil Appeal No. 110 of 2011*, as annex JNN 1. He further deponed that the search certificates in respect of the suit parcels of land do indicate that the deceased and others were registered as owners of the suit parcels of land (paras. 8,9 and 10).

5. Counsel for the two administrators filed written submissions in opposition to the protest. According to her, the protest is without merit. She has pointed out that the Court of Appeal judgement in Civil Appeal No 110 of 2011 is very clear. It is to the effect that the Court of Appeal decreed that the land parcels belonged to the individuals who were parties to that appeal. She has also submitted that the certificates of search annexed to the replying affidavit of the administrators clearly indicate that the parcels of land belong to the individuals and not to the Nditi clan members.

6. I have considered the affidavit evidence of both parties. I have also considered the submissions of both counsel and the authorities cited. I find that the lands in dispute were decreed after a long series of court cases to be the property of individuals and not that of the Nditi clan. The *Court of Appeal judgement in*

Civil Appeal No. 110 of 2011 is conclusive in this this regard.

7. In the light of the foregoing, I hereby find that the protest is without merit and is dismissed with no orders as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **6th** day of **JULY 2016**

In the presence of both administrators and in the presence of the protestor and in the absence of their counsel.

Court clerk Njue

J.M. BWONWONGA

JUDGE

06.07.16