



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 382 OF 2002

In the matter of the Estate of KARIUKI MBECAINYA (Deceased)

SILAS NYAGA IRERI.....PETITIONER/APPLICANT

VERSUS

JAMES NYAGA IRERI.....OBJECTOR/RESPONDENT

R U L I N G

This is a ruling on an application dated 12/11/2009 seeking for orders that the objector/respondent do pay the applicant KShs.283,105/= in compliance with the court's order dated 4/10/2007 for compensation of plants that fall on the applicant's portion of land. The grounds supporting the application are that the applicant applied for revocation of grant was issued to the respondent on 4/10/2007. The court declined to revoke the grant and instead ordered that each of the parties take their respective shares in the estate.

It was further ordered that the applicant be compensated for the plants/crops which fell on the respondents' portion the valuation of which was done by the area agricultural officer and the report presented to court.

The respondent opposed the application on grounds that the land in question NGANDORI/NGUVIU/1419 had not been sub-divided when the order of 4/10/2007 was issued. He stated that the applicant was very hostile and was not involved in the sub-division of the land. The respondent incurred costs for sub-division amounting to KShs.33,480/= and the applicant did not make any contribution. The respondent was not present when the agricultural officer carried out the valuation. The report does not indicate which parcel of land was involved and the value of the crops was grossly exaggerated. It is therefore difficult to ascertain what plants fall on the applicant's share.

The respondent further argues that it is unfair for him to be condemned to pay all the costs single handedly while the applicant continues to utilize the whole portion of land. The applicant should be ordered to vacate the respondent's portion.

The rejoinder of the applicant was that the respondent should comply with the order of the court. He has not annexed another valuation report to counter that of the applicant. It was in the interest of justice to award costs to the applicant. The respondent placed a restriction on parcel No. NGANDORI/NGUVIU/1419 and it is important the said restriction be removed.

The said court order dated 4/10/2007 stated as follows:-

- *Ngandori/Nguviu/1419 be divided equally between the petitioner and the objector.*
- *A valuation of the plants that fall on the petitioner's side be done by an agricultural officer.*
- *The portion with plants belong to the protestor's plants shall go to the protestor as much as possible.*
- *The petitioner shall compensate the protestor for any plants that may be found to fall on his portion in accordance with the valuation of the officer.*
- *The application for revocation was dismissed.*
- *Costs be awarded to the petitioner.*

From the reading of the orders of the court it is clear that it was the petitioner/applicant who was to pay the objector/respondent compensation for the plants which were to fall on his side upon sub-division of the land NGANDORI/NGUVIU/1419 amounting to KShs.283,105/= . The applicant cannot therefore claim the amount when it is him who bears the responsibility to compensate the respondent. There is evidence in the court record that the respondent is the one who had moved to the land to stay with his brother the deceased herein during his lifetime. With the consent of the deceased the respondent planted permanent crops including tea bushes on the land before the deceased died.

The order attached to the application does not reflect the actual pronouncement of the court. The word "objector" has been substituted with the word "petitioner" contrary to the court order. It is my considered opinion that the order appears vague and incapable of being enforced.

It is correct as claimed by the respondent that the valuation report does not indicate the land in relation to which the report was made. It is not in dispute that a restriction was placed on the land which is a hindrance to the beneficiaries utilizing their portions.

All the foregoing considered, I am of the opinion that this application is not merited. There is no doubt that the person who planted the tea bushes and other crops requires to be compensated by the person who takes his crops upon sub-division. For these reasons and in the interests of justice, the court makes the following orders:-

1. *That each party takes possession and utilizes their respective parcels.*
2. *That the respondent/objector be compensated for the crops which fall on the applicant's portion (upon sub-division).*
3. *That the parties agree on an agricultural extension officer other than the one who did the earlier report to do the valuation of the crops which fall on the applicant's/petitioner's share.*
4. *That the applicant/petitioner shall compensate the respondent/objector for his plants/crops in terms of the valuation report.*
5. *That the restriction placed on NGANDORI/NGUVIU/1419 or any of the parcels resulting from sub-division be and is hereby lifted.*
6. *That each party bears their own costs of this application.*

It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF JUNE, 2015.

F. MUCHEMI

J U D G E

Parties absent.

Notice to be sent to them by the DR of the ruling.