

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 167'B' OF 2008

In the matter of the Estate of NJOKA MURA KUNYUA (Deceased)

SHADRACK NJAGI.....APPLICANT

V E R S U S

SIMON NJIRU NJOKA.....RESPONDENT

DIRECTIONS

1. This court was requested to give directions as to how the parties in this case should proceed with the applications pending in this cause. There is an application for revocation of grant confirmed on 6/12/2012 in favour of one Kellen Njura Njoka. The grant is to the effect that she inherits the whole of L.R. Ngandori/Ngovio/482.
2. The applicant Shadrack Njagi Njiru claims 2/3 of the share of Ngandori/Ngovio/482 in that he and the deceased Njoka Murua Kunyua bought land together. According to the applicant, the share of the deceased was 1/3 while the he was to take 2/3 share. The applicant seeks revocation of the grant with this claim in mind. The application is dated 18/07/2014 and is pending hearing and determination in this case.
3. Kellen Njura has since died and this cause was taken over by her son Simon Njiru Njoka who is the respondent herein. Mr. Mugambi for the respondent proposed that the parties could record a consent to have the grant rectified so that each party takes their half share. He refers to the ruling and judgment of Ong'udi, J. in Embu HCA No. 6 of 2002. On request of the parties, the appeal file was joined to this succession cause No. 167'B' of 2008.
4. The result of the appeal is that it was dismissed by Ong'udi, J. on 19/06/2012. The appeal was filed by the applicant herein challenging the arbitration award of the tribunal filed in Embu PMCC No. 93 of 1992. The effect of the dismissal of the appeals is that the award of the tribunal was upheld which gave each party (Shadrack Njiru and Kellen Njura) equal shares of the land L.R. Ngandori/Ngovio/482.
5. The applicant did not exercise his right to challenge the appeal which upheld the judgment in Embu PMCC No. 93 of 1992. This case No. 93 of 1992 had been referred for arbitration of the elders by consent of the parties.
6. If the application for revocation of grant was to be heard, it may not change the judgment of Ong'udi, J. (that upheld the judgment in PMCC No. 93 of 1992). It may be uneconomical in way of time and judicial resources to hear the application for revocation which may require to be heard by way of *viva voce* evidence. The same witnesses before the elders may be the same ones to testify in this application.
7. Having perused this file and the HCA No. 6 of 2002, I find that proposal of the respondent would save time and resources of the court and the parties.
8. I have taken time to explain these directions to the parties. However, the applicant is at liberty to prosecute his application for revocation. The respondent is also at liberty to raise any legal issues in whatever manner he deems fit.

DIRECTIONS READ TO THE PARTIES IN CHAMBERS AT EMBU THIS 29TH DAY OF

NOVEMBER, 2017.

F. MUCHEMI

J U D G E