



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCC. CAUSE NO. 435 OF 2006**

**IN THE MATTER OF THE ESTATE OF PETER GITAU (DECEASED)**

**LYDIA WAMBUI GITAU.....APPLICANT**

**VERSUS**

**REGINA WAMBUI GITAU.....RESPONDENT**

**RULING**

1. The applicant Lydia Wambui Gitau and the respondent Regina Wambui Gitau are widows of the deceased Peter Gitau Karanja who died intestate on 1<sup>st</sup> March 1995. Each widow was left with children. Amongst the properties that the deceased left were land parcels Kwale/Diani/129 measuring 5 acres and Kwale/Diani/33 measuring 5 acres. There was partial confirmation of the grant issued to the applicant and the respondent in respect of the two properties. The Court ordered that each be registered to hold half share in either property to hold in trust for herself and her children.
2. The applicant filed the instant application on 2<sup>nd</sup> November 2015 seeking that this registration be varied so that parcel 129 be registered in her name and that parcel 33 be registered in the name of the respondent. The applicant's case was that each parcel is leasehold from the Government of Kenya and attracts the payment of rates and rent. These have to be equally borne by them. Further, each parcel has squatters. It was agreed that the applicant pays rates and rent for parcel 129 and removes the squatters and the respondent does the same for parcel 33. The applicant has been paying rates and rents for parcel 129 and has used resources to remove squatters from there, but the respondent has not done either for parcel 33. Parcel 33 is threatened with auction for non-payment of the dues. The applicant has therefore applied that she be given 129 alone and that the respondent be given 33 alone.
3. The respondent opposed the application which she said amounted to the reviewing of the orders of Justice Nambuye that ordered the present registration. Such an action, she said, would not lie given that there is an application dated 24<sup>th</sup> June 2014 for review that the applicant filed and which is partly heard. On the facts, she stated that she has so far spent Kshs.200,000/= to evict squatters from parcel 129.
4. That there is an application dated 24<sup>th</sup> June 2014 by the applicant seeking to review, vacate or set aside the orders that led to the present registration is not in dispute. The applicant was apparently dissatisfied with the partial confirmation orders that led to the registration. That application is earlier to the present one. It is an abuse of the process for a party to bring two applications seeking similar orders in the same file (**National Bank of Kenya Ltd –v- John Odawa Oluoch [1997]LLR (HCK)**). The applicant should pursue to completion the application dated 24<sup>th</sup> June 2014.
5. Secondly, the applicant should remember that the registration that they each hold is in trust for

herself and her children. The children (and I am sure they are now adults) would have to be heard on the application as they would each be affected by the result. There is no indication that they were served with the application.

6. In short, the application lacks merits and is dismissed with costs.

**DATED and DELIVERED at NAIROBI this 27<sup>th</sup> January 2016.**

**A.O. MUCHELULE**

**JUDGE**