



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

SUCCESSION CAUSE NO. 310 OF 2005

**IN THE MATTER OF THE ESTATE OF NJUGUNA NDURU (DECEASED)**

**JUDGMENT**

1. By a Chamber Summons dated 2<sup>nd</sup> October, 2012 the Applicant seeks orders that:-

**(a) That David Irungu Thandi be considered as a beneficiary/buyer of 0.5 acres out of Kiganjo/Gachika/315 from the house of Teressiah Nyambura Njuguna**

**(b) That cost of this suit be provided for.**

2. The application is supported by the annexed affidavit of David Irungu Thandi the Applicant herein and sworn on 2<sup>nd</sup> October, 2012. She depones that on 11<sup>th</sup> October, 2006 he entered into a Sale Agreement with one Teresiah Nyambura Njuguna now deceased; that in the Sale Agreement she was to buy 0.50 acres to be excised from Land Parcel No. Kiganjo/Gachika/315 at sale price of Kenya Shillings Two Hundred and Ten Thousand (210,000/=) only. He avers that she paid Kenya Shillings Seventy Thousand(70,000/=) only to the seller on signing the said agreement; further that he took possession of the said 0.50 acres immediately and built a house thereon where he resides to-date. It is his averment that the seller died on 24<sup>th</sup> December, 2009 and by which time he had paid Kenya Shillings One Hundred and Eighty Three Thousand (183,000/=) as part the purchase price. The Applicant further avers that the deceased children met with him upon her death and they increased the purchase price from Kshs. 210,000 to Kshs. 260,000 and that he agreed to the new terms. That on 21<sup>st</sup> February, 2010 he paid Kshs. 77,000 to all the children of the deceased mother and they all acknowledged receipt of the said money leaving no balance on the sale price; and it is the Applicant's statement that the land was being sold to meet the deceased's medical expenses as she was very sick by the time he bought the land; and finally that if this application is not considered then he would lose the land as the children/beneficiaries of the said Teresiah Nyambura Njuguna (deceased) are now not cooperating with him.
3. From the record, it is patently clear that the Applicant and the deceased entered into a written agreement for Sale of 0.5 Acres out of Kiganjo/Gachika/315 from the house of Teressiah Nyambura Njuguna (deceased). Indeed, Mr. Joseph Mwangi has told the Court on 11<sup>th</sup> June, 2013 that he was aware of the sale transaction between his mother (the deceased) and the Applicant herein.
4. Upon perusal of the file, I note that there is a Sale Agreement made on 11<sup>th</sup> October, 2006 in which the deceased was the vendor and the Applicant the purchaser in respect of 0.5 acres of Land Parcel No. Kiganjo/Gachieka/315. Paragraph 8 of the said Agreement states thus: **“the Purchaser will take possession of the said 0.5 acres immediately”**. Further, at paragraph 9 it states that **“the seller will transfer the said 0.5 acres to the purchaser soon after the grant at the High Court Succession Suit is confirmed.”**
5. The Purchaser took possession immediately upon payment of Kshs. 70,000 and resides thereon. The Applicant has shown that he paid Kshs. 260,000 to the deceased as agreed. There is on record a further Sale Agreement made on 10<sup>th</sup> April, 2013 as between the Purchaser and one Joseph Mwangi Njuguna being the Administrator on part of the house of Teressiah Nyambura Njuguna

(Deceased) where the price of the said 0.50 acres of Land Parcel No. Kiganjo/Gachika/315 was raised to Kshs. 400,000 and the said Joseph Mwangi Njuguna has acknowledged the sum of Kshs. 260,000 only leaving the balance of Kshs. 140,000. The said Agreement recognises the fact that the Purchaser is already in occupation of the said 0.50 acres out of land Kiganjo/Gachika/315.

6. Both the Applicant and Joseph Mwangi Njuguna filed in affidavit of consent on 22<sup>nd</sup> April, 2013. The said consent reads as follows:
  - a. **That David Irungu Thandi ID No. 5178686 be considered as a buyer /beneficiary of 0.5 Acres out of Kiganjo/Gachika/315 from the house of Teressiah Nyambura Njuguna (Deceased).**
  - b. **That the said David Irungu Thandi to pay Kshs. 140,000 in addition to the Kshs. 260,000 already paid to Teressiah Nyambura Njuguna and the same to be paid on or before 30<sup>th</sup> September, 2013.**
7. On account of the foregoing, I find that the said agreements are valid and binding and for that reason the application is merited. Accordingly, the Applicant Mr. David Irungu Thandi is hereby considered a buyer/beneficiary of 0.5 Acres out of Kiganjo/Gachika/315 from the house of Teressiah Nyambura Njuguna (Deceased).
8. The application herein is allowed.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> DAY OF January, 2014.**

**W. MUSYOKA**

**JUDGE**