



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

CONSTITUTIONAL APPLICATION NO. 5 OF 2014

**IN THE MATTER OF AN APPLICATION UNDER CHAPTER 4 ARTICLES 22(1) (3) (F) AND
SCHEDULE 6 PART 5 CLAUSE 19 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF MWEA SETTLEMENT SCHEME RICE HOLDING NO. 2198

THIBA SECTION

BETWEEN

CATHERINE WAMBUI MURIITHIAPPLICANT

VERSUS

THE MANAGER, MWEA IRRIGATION

SETTLEMENT SCHEME1ST RESPONDENT

FLORA WANGUI Alias FLORENCE

WAMBUI MURIITHI2ND RESPONDENT

**THE CONSTITUTION OF KENYA SUPERVISORY JURISDICTION AND PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL, HIGH COURT PRACTICE
AND PROCEDURE RULES 2006**

JUDGMENT

By a Constitutional application dated 21st July 2014 and filed in this Court on the same day, the applicant seeks the following substantive remedies:-

- 1. An order that the applicant's fundamental right to own property has been infringed by the 1st respondent by awarding the 2nd respondent one acre out of the applicant's rice holding number Mwea Settlement Scheme rice holding No. 2198 A measuring 2 acres in ignorance of the District Magistrate Court at Wanguru Miscellaneous Succession Cause No. 4 of 1966.***
- 2. An order that the 1st respondent is not a beneficiary entitled to share in the Estate of***

JOSPHAT NDANGURI WANGO (deceased)

3. That this Court in exercise of its supervisory power be pleased to quash the 1st respondent's decision as contained in the minutes dated 1st April 2014.

4. That is Court be pleased to order the cancellation of any licence that may have been issued to the 2nd respondent in relation to Mwea Settlement rice holding No. 2198 following the decision of the 1st respondent.

The application is supported by the applicant's affidavit also dated 21st July 2014 and other annexures being:-

(a) Proceedings in Wanguru Miscellaneous Succession Cause No. 4 of 1996

(b) Minutes of the 1st respondent's Sub-advisory meeting dated 17th April 2014 with respect to rice holding No. 2198.

The applicant filed this application in person before appointing an advocate by the names Ndata Mugo to come on record for her.

As is the case where applicants file documents in person, the pleadings herein leave a lot to be desired. Indeed I was tempted to have the whole application struck out for lack of clarity and failure to cite the legal provisions being relied upon. However, bearing in mind the provisions of **Article 159 of the Constitution** and secondly the fact that this application was not opposed by either of the respondents though served, and lastly, the general powers donated to this Court by the Environment and Land Court Act to determine applications for redress of a denial violation or infringement of or threat to rights relating to land as provided for under **Section 13 (3) of the Environment and Land Court Act**, this Court decided to consider the said application notwithstanding the not so elegant manner in which it was drafted.

I have considered the application and the supporting affidavit and other documents. What is clear is that rice holding No. 2198 at Mwea Settlement Scheme Thiba Section was originally registered in the names of one JOSPHAT NDANGURI WANGO who is the applicant's father. Following the deceased's death, there was a dispute over the said rice holding which ended up in Wanguru Succession Cause No. 4 of 1996 and on 12th September, 2000, the Court made the following order:-

- 1. Catherine Wambui Muriithi (Applicant herein) be registered as the owner of holding No. 2198 A – 2 acres**
- 2. Tasiana Wanjiku Kabaka – No. 2198 B – 1 acre**
- 3. Nickalina Michere Nahashon – No. 2198 C – 1 acre.**

Although it is not clear from the record, this dispute did not end with the above order and a party moved the same Court in the said Wanguru Succession Cause No. 4 of 1996 and the matter came up before Kimutai K.T. Ag Senior Resident Magistrate on 17th May, 2007 where an advocate by the name of Mr. Kiama appeared for an applicant (who is not named) and informed the Court that the respondents were offering his client 1 acre and he needed to take instructions on that offer. The record shows that one of the respondents named as Catherine Wambui (presumably the applicant herein) addressed the Court in the following terms:-

“We offered to give the applicant one acre. No objection to adjournment as I am unwell also”

The magistrate then fixed a mention for 31st May 2007 **“to see if the parties will have settled out of**

Court”.

It is not clear what transpired on 31st May 2007 as the record availed to me only has the proceedings upto 17th May 2007. What is clear however is that some seven (7) years later on 17th April, 2014, the applicant herein together with the 1st respondent and Taciana Wanjiku appeared before a Sub-advisory Committee of the 1st respondent. The dispute was over the rice holding No. 2198 and Nikarina Micere (presumably the Nickalina Michere that appeared before the Wanguru Court in Miscellaneous Succession Cause No. 4 of 1996 when orders were made on 12th September, 2000) was marked as absent. From the record of what transpired in the Sub-Advisory Committee meeting of 17th April, 2014, it is clear that the late JOSPHAT NDANGURI WANGO, had two wives namely WAMBETI and VIRGINIA NDANGURI (all deceased) and although the rice holding No. 2198 had been divided among the deceased’s two houses, FLORA WANGUI the daughter of the second wife was left out when Succession proceedings were being filed. FLORA WANGUI who is the 2nd respondent herein is captured in MIN 1/04/2014 as having said as follows:-

“Catherine proposed to the Committee that the holding should be distributed equally among all family members”

Having deliberated over the dispute involving this rice holding, the said Sub-advisory Committee of the 1st respondent made a finding that all the beneficiaries of the rice holding were from the family of the first wife of the deceased and therefore proceeded to make the following order:-

“VERDICT

The Committee concluded that the following people should sub-divide the holding as follows:-

- ***Catherine Wambui to hold 1 acre***
- ***Nickarina Micere to hold 1 acre***
- ***Flora Wangui to hold 1 acre***
- ***Taciana Wanjiku to hold 1 acre”***

Given the above history of the dispute involving the rice holding number 2198 which, it would appear, was originally registered in the names of the deceased JOSPHAT NDANGURI WANGO the father of the applicant and the 2nd respondent, it is not open to the applicant to come to this Court alleging that her Constitutional right to own property has been infringed by the 1st respondent in awarding one acre of the said rice holding to the 2nd respondent. It is of course true that the applicant, like any other Kenyan, is entitled under Article 40 of the Constitution to acquire and own any property. A rice holding is, however, the property of the National Irrigation Board established under the ***Irrigation Act (Chapter 347 Laws of Kenya)***. The said National Irrigation Board issues licences to persons to occupy and work in the various rice holdings and such persons are only licencees. Such rice holdings are not the personal properties of those licencees and therefore do not form part of their Estate to be distributed under the law of Succession Act. Therefore, what transpired in Wanguru Succession Cause No. 4 of 1996 was of no legal consequences. All that the deceased JOSPHAT NDANGURI WANGO was required to do during his life-time was to appoint someone to succeed him as licencee of rice holding No. 2198 as provided under ***Section 7 (1) of the Irrigation (National Irrigation Schemes) Regulations 1977***. As the deceased JOSPHAT NDANGURI WANGO died without appointing a successor, his authorized dependent was required to nominate a successor to be approved by the Court as provided for ***under Section 7 (4) of the Irrigation (National Irrigation Schemes) Regulations*** which had to be approved by the Court. This appears not to have been done and that explains why this dispute ended up with the Sub-Advisory Committee which made the decision it did.

As I have indicated above, the applicant herein was present when the Sub-Advisory Committee made the decision that it did. She herself said that the rice holding should be “***distributed equally among all family members***”. Infact the Committee’s report states that the applicant “***proposed***” to the Committee about that equal distribution and the Committee having found that rice holding had initially benefited only the family of the first wife, it proceeded to make the orders that it did. The applicant cannot now complain that the Committee’s verdict which arose from her own proposal is an infringement of her right. This Court in making its decisions is required, under **Section 18 of the Environment and Land Court Act**, to be guided by among others the principles of equity. It would be in-equitable to leave out one house of the deceased JOSPHAT NDANGURI WANGO in distributing the said rice-holding. I think substantial justice was done by the Sub-Advisory Committee of the 1st respondent in arriving at its decision dated 17th April 2014 and I see no reason to interfere with the same.

Ultimately therefore, the applicant’s Originating Notice of Motion dated 21st July 2014 is hereby dismissed with no order as to costs

B.N. OLAO

JUDGE

14TH NOVEMBER, 2014

14/11/2014

Before

B.N. Olao – Judge

Mwangi – CC

Applicant – present

Respondent – absent

COURT: Judgment delivered in open Court this 14th day of November, 2014

Applicant present

Respondent absent

Right of appeal explained.

B.N. OLAO

JUDGE

14TH NOVEMBER, 2014