

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE 1138 OF 2007

IN THE MATTER OF THE ESTATE OF SAMUEL MUNYAO NGUKU (DECEASED)

FRANCIS KIMANI KARIUKI APPLICANT

VERSUS

KASOLE MAKAU.....1ST RESPONDENT

MANICA MUONO.....2ND RESPONDENT

R U L I N G

The background to this matter goes back to December, 2011 when the Applicant, Mr. FRANCIS KIMANI KARIUKI, filed an application by Chamber Summons seeking orders relating to Kakuzi/Gitwamba/BlockII and Kakuzi/Gitwamba which had been subdivided into two plots Nos. 341 and 342. He sought orders for eviction of the Respondents from the said land and an order to Thika District Land Registrar to issue the title to land in respect of the said parcels. According to the court record, the Respondents were duly served with a hearing notice on 3rd January, 2012. However, none of them attended court for the hearing and, as fate would have it, none of them had filed any replying affidavit or grounds of opposition. In the circumstances, the court observed that the application was not opposed and granted to the Applicant the orders prayed for.

By this application, the Respondents seek to set aside these *ex parte* orders. They also seek to have stated the orders made by Judge Kimaru on 10th March, 2011 and or consequential orders and that the 2nd Respondent be granted leave to defend the suit.

The application is based of the ground that-

- (a) The Applicant obtained *ex parte* orders without disclosing material facts to this court that on 10th March, 2011, Justice Kimaru gave orders that the Applicant and the 2nd Respondent do share the suit property in equal shares.**
- (b) The Applicant and second Respondent had been registered as absolute Proprietors of the deceased before the partition**
- (c) The estate of the deceased was partitioned into two portions and the Applicant is a registered owner of parcel No. Kakuzi/Gitwamba/Block II/431 while a 2nd Respondent is the owner of parcel No. Kakuzi/Gitwamba/Block II/432.**
- (d) That is it in the interest of justice that the orders sought by the 2nd Respondent be granted.**

It is noteworthy from the grounds, on which the application is based that none of them explains why the Respondents did not attend court on 21st May, 2012. For that reason, it seems to me that they simply ignored attending court on the material date and for no good reason. I have also noted that they did not file any replying affidavit or grounds of opposition. Therefore there is no basis for lifting the orders which were made in their absence.

Finally, I note with concern that the learned counsel for the 2nd Respondent/Applicant submitted orally that parcels 341 and 342 do not exist and that Kakuzi/Gitwamba/Block II/177 was partitioned into two parcels and given Nos. 431 and 432. On the other hand, upon perusing the ruling delivered by Hon. Justice L. Kimaru on 10th March, 2011, the learned judge states that according to the mutation, the suit parcel of land formerly known as parcel No. 177 was subdivided into two portions renumbered as Nos. 341 and 342 respectively. Those are the same Nos. that the Applicant, Francis Kimani Kariuki is also talking about. For this reason, I do not see why the orders of the learned judge should be stayed.

On account of the foregoing, I find that this application has no merit and its hereby dismissed with costs.

Orders accordingly

DATED and **DELIVERED** at **NAIROBI** this 19th day of July, 2012

L. NJAGI
JUDGE