



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. APPLICATION NO. 51 OF 2010

BENJAMIN KNOXWELL NGATIA WAMBUGU.....APPLICANT

VERSUS

GATANDI WAMBUGU.....1ST RESPONDENT

KARIMI WAMBUGU.....2ND RESPONDENT

WACHIRA WAMBUGU.....3RD RESPONDENT

NGAHU WACHIRA.....4TH RESPONDENT

WAMBUGU WACHIRA.....5TH RESPONDENT

RULING

This ruling is the outcome of the Motion dated 28th April 2010 in which **Benjamin Knoxwell Ngatia Wambugu**, the applicant herein, sought for the following orders:

- (a) That the original Titles in respect of Land Parcel Numbers Chinga/Gikigie/940, Chinga/Gikigie/941 and Chinga/Gikigie/942 revert to the original numbers of Chinga/Gikigie/69.**
- (b) That the District Land Registrar – Nyeri be authorized to revert the sub division of Land Parcel Numbers Chinga/Gikigie/939, Chinga/Gikigie/940, Chinga/Gikigie/941 and Chinga/Gikigie/942 to Chinga/Gikigie 68 and Chinga/Gikigie/69.**
- (c) That the District Land Registrar – Nyeri be authorized to facilitate the consolidation of the Chinga/Gikigie/68 and Chinga/Gikigie/69.**
- (d) That the Provincial Surveyor be authorized to amend the map to reflect Chinga/Gikigie/68 and Chinga/Gikigie/69 from Chinga/Gikigie/939, Chinga/Gikigie/940, Chinga/Gikigie/941 and Chinga/Gikigie/942.**

(e) That the costs of this application be provided for.

The Motion is supported by the affidavit of the Applicant. When served, Gatandi Wambugu, Karimi Wambugu, Wachira Wambugu, Ngahu Wachira and Wambugu Wachira, being the 1st – 5th respondents respectively filed the replying affidavit of Christopher Ngahu Wachira to oppose the Motion.

When the Motion came up for interpartes hearing, Miss Keli, learned advocate for the Applicant, urged this court to allow the Motion so that the orders issued on 18th November 2009 can be effected. It is argued that on the aforesaid date, the court ordered land parcels No. **L.R. CHINGA/GIKIGIE/939-942** to be consolidated. It is said that it is impossible to give effect to the order because those parcels of land do not belong to one person. It is shown that parcels NO. **CHINGA/GIKIGIE/939** and **CHINGA/GIKIGIE/941** belong to Moses Wambugu Wachira while **L.R. NOS. CHINGA/GIKIGIE/940** and **CHINGA/GIKIGIE/942** belong to Christopher Ngahu Wachira. It is the submission of the Applicant that it is only fair and just that the court issues an order directing titles to revert back to their original numbers for the effective execution of the court orders dated 18th November 2009. The Respondents on the other hand are of the view that the Motion is misconceived in that the 1st Respondent is dead. It is also stated that the Applicant had previously sought for similar orders vide **Nyeri C.M.C.C. NO. 31 of 2001**. It is also stated that the court did not order for the consolidation of the suit parcels of land.

I have considered the material placed before this court and the rival submissions. The Applicant herein has attached to his affidavit an order issued by Hon. Mr. Ole Keiwua, the Senior Resident Magistrate, dated 18th November 2009 in which the Hon. Magistrate ordered for *inter alia* the consolidation of the parcels of land known as **L.R. NOS. CHINGA/GIKIGIE/939-942**. The learned Magistrate issued the orders while dealing with an application to adopt the decision of the Central Provincial Appeals Committee. The Applicant is now before this court seeking for the orders I have hereinbefore stated. Basically the Applicant is saying that it is impossible to implement the adoptive decision unless the orders sought are given which in essence will alter and or amend the orders. There is an averment that the subordinate court lacks jurisdiction to enforce the adoptive order hence the making of this application. The truth of the matter is that, a dispute was filed before the Othaya Land Disputes Tribunal in respect of a claim over the suit parcels of land. The Land Disputes Tribunal found that the Applicant herein was entitled to be compensated by the 1st Respondent. The applicant was aggrieved by the decision of the Land Disputes Tribunal hence he was forced to appeal to the Central Province Appeals Committee. The Appeals Committee ruled that the parcels of land known as **L.R. NOS. CHINGA/GIKIGIE/68** and 69 (i.e. now sub-divisions NO. 939-942) be sub-divided into four equal portions, each measuring 1.9. acres. The provincial Appeals Committee's decision was adopted as earlier stated. It is trite law that the role of the subordinate court in adopting Land Disputes Tribunal's decision is for purposes of execution hence it is not true to state that the court had no jurisdiction to enforce the decision. With respect, I agree with the Respondents that the proper court to deal with the issue touching on the execution of the decree is the subordinate court. Being of the above view, I am satisfied that the Motion is improperly before this court. The same is ordered struck out. Since the dispute involves close relatives, I direct that each one meets his own costs.

Dated and delivered at Nyeri this 17th day of June 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Wachira holding brief Mugo for Respondent and Miss Wambui holding brief Keli for the Applicant.