

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 83 of 2006

SUSAN NDURUKIMBAU..... ADMINISTRATRIX

VERSUS

ROSE WAIRIMU MBAU.....APPLICANT

RULING

In her Chamber Summons dated 8th June 2009, Susan Nduruki Mbau the Administratrix of the estate of Stephen Mbau Muticha seeks under **Rules 59 and 73** of the **Probate and Administration Rules** the cancellation of the registration of Title Numbers **Subukia/Subukia Block 9/4** and **Subukia/Subukia Block 9/8** in the name of Rose Wairimu Mbau on the ground that she unlawfully registered those pieces of land in her name. She deposes in her affidavit in support that those pieces of land form part of the estate of the deceased but the said Rose Wairimu Mbau got them registered in her name without a grant of letters of administration authorizing that.

The application is opposed. In her replying Affidavit, Rose Wairimu Mbau, the respondent avers that the suit pieces of land did not form part of the deceased's estate and that if they are distributed to all the beneficiaries deceased her house shall be disadvantaged.

I have considered the application and read the file. The deceased in this case died on

22nd March 1986. The respondent got the suit pieces of land registered in her name on 24th February 1993. The Respondent has not denied the Administratrix's claim that the pieces of land belonged to the deceased and not to her. She has only asserted in her replying affidavit that those pieces of land do not form part of the deceased's estate and that if they are distributed to all the heirs of the deceased her house will be disadvantaged. That averment would not have been necessary if those pieces of land had at any time belonged to the deceased.

For these reasons I allow the application and order that the registration of pieces of land known as Title Numbers **Subukia/Subukia Block 9/4** and **Subukia/Subukia Block 9/8** in the name of Rose Wairimu Mbau be cancelled and those pieces of land be distributed to the heirs of the deceased in accordance with the Certificate of Confirmation issued by this court on 23rd February 2009. The respondent shall personally pay the costs of this application.

DATED and DELIVERED this 2nd day of July, 2010.

D. K. MARAGA

JUDGE.