



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
MISCELLANEOUS APPLICATION 916 OF 2007

HANNAH WAMBUI MACHARIA wife and administrator

Of the estate of JULIUS MACHARIA NGATHO (deceased).....APPLICANT

VERSUS

MARGARET NDATA NG'ANG'A.....RESPONDENT

R U L I N G

This is an application by way of Notice of Motion brought by Julius Macharia Ngatho seeking orders that the order by this Honourable Court made on 7th March 2008 dismissing his application dated 27th November 2007 be reviewed and set aside and the said application be reinstated for hearing. The application is based on the grounds as stated on the body of the Notice of Motion and supported by an affidavit sworn by the Applicant.

The application is opposed by the Respondent.

The facts which gave rise to this litigation briefly may be stated.

The Respondent was married to the Applicant now deceased for about 12 years. During the subsistence of the marriage they acquired the suit land being **LR No TINGANGA/KIANDA/BLOCK 1/666**. Their marriage broke down and they divorced and the Respondent ran away.

In the year 2001, the Respondent came back and claimed the suit land. She filed a reference before the Kiambu Land Disputes Tribunal being land case No 16/20/12/2001.

Both parties appeared before the elders and testified. The Elders after listening to the evidence of both parties decided to make an award in favour of the claimant Margaret Nduta Macharia.

The objector was aggrieved with that decision but before he could appeal he passed away. The application to file this application out of time was filed by his widow Hannah Wambui who had then been appointed the Administrator of the estate of the deceased. The application was filed on 27th November 2009. It was set down for hearing on 7th March 2008 but both parties did not attend and the application was dismissed by Ang'awa J. for non-appearance. This is the order the Applicant has applied to be reviewed and set aside and application be reinstated. This application is based on the ground that there was confusion. The date was given through a serial number by the registry which was later changed

without notifying the parties and that is why both parties did not attend.

Having considered the application in light of the affidavit evidence on record and submissions by both Counsel I ma satisfied that the Applicant has given reasonable cause as to why she did not attend the hearing.

I am persuaded to exercise my discretion in favour of the Applicant. I allow the application in terms of prayer 1 and 2 of the Chamber Summons dated 17th February 2009. Due to the age of the application I order that a hearing date be taken in the registry on priority basis. Those are the orders of this court.

Dated and delivered at Nairobi this 23rd day of June 2009.

J. L. A OSIEMO

JUDGE