

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 446 of 2006

IN THE MATTER OF THE ESTATE OF DANIEL MUGO MWANIKI.....DECEASED

MWANIKI IRERI.....APPLICANT

VERSUS

JANE KUTHII NDEGE.....RESPONDENT

RULING

Summons filed on 18/9/2006 and dated 16/9/2006 seek to revoke a grant of letters of administration issued to the Respondent on 22/7/2005. The revocation is limited to the asset **No. Parcel Baragwi/Thumaita/518**. At the hearing the parties agreed that only affidavits will be relied on and any submission Counsel may wish to make. The grounds upon which the application is made are that the Respondent concealed that the applicant was entitled to some 3.77 acres out of the title Baragwi/Thumaita/518 and that there was a decree in Senior Resident Magistrate Land Dispute Case Number 62/2004 awarding the applicant that portion. The applicant has exhibited the order adopting the award in Land Dispute Tribunal Case No. 62/04 made on 25/11/2004 and the confirmation of grant dated 2005. Where Kanini Ndege was given Baragwi/Thumaita/518 whole which is 6 ½ acres (2.71 ha). The Respondent states that in the proceedings held in Nyeri HCC Civil Case No.419/1986 on 23/1/91 the High Court said there is no valid reason to give the plaintiff (Mwaniki Njeru) any portion of it. There is no decree of court drawn in that case. The respondent also says that the Tribunal award was without authority. However there is no order to nullify the same it stands as Judgment of court in Lands Disputes Tribunal 62/2004.

I have considered the claims of both parties it is correct to say that the petition of a grant was advertised but it was not shown that the Respondent acted in secret. The Applicant did not file a protest when it came to the confirmation that is the time he should have noticed that his interest was not included in the distribution of the deceased land. In Nyeri HCC No. 419/1986 the High Court did not follow the award of elders. But the same was set aside. The court found that the defendant Mugo Mwaniki had title to the land after purchase from the plaintiff Mwaniki Njeru. Whether the finding was reduced to a decree or not, it is quite clear that court found for the defendant Mugo Mwaniki. It is not clear how the matter came to Lands Disputes Tribunal as L.D.T 62/2004 between Kanini Mugo Mwaniki and Mwaniki Njeru Ileri. The history of this title is shown in Exhibit D1. The first registered owner on 15/11/55 is Ileri Njeru and there was name change to Mwaniki Njeru on 9/4/69. Then on 11th March 1970 Mugo Mwaniki was registered as proprietor and consideration was recorded as Shs.4955/=. Then there was a caution by Mwaniki Njeru Ileri, and on 21/10/2004 restriction by D.O. Gichugu. Therefore in 1970 the land passed to Mugo Mwaniki. Mwaniki Njeru Ileri protected his interest by a caution claiming a licence. This is in accordance of High Court finding that Mugo Mwaniki had purchased the land and there was no reason to give the land to Mwaniki Njeru. Therefore Gichugu Lands Dispute Tribunal had no reason to deal with the land which had already been dealt with by High Court see Section 13 Land Disputes Act No. 18/90. It is clear then what is stated under paragraph 6 of replying affidavit is correct.

Upon examining the above I do not find that there was any concealment of the claims of the Applicant. I also do not find that the Applicant has any interest in the said land. I therefore dismiss the application with costs.

Dated this 28th January, 2008.

J. N. KHAMINWA

JUDGE

28/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Muraguri

Mr. Magee HB for Mr. Chomba

Read in open court.

J. N. KHAMINWA

JUDGE