

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 330 of 1996

IN THE MATTER OF THE ESTATE OF NDIRITU KORAGE.. DCD

AND

DAVID KAMONDO NDIRITU..... PETITIONER

VERSUS

JAMES GIKARIA NDIRITU OBJECTOR

RULING

This ruling relates to Chamber Summons dated 16th January 2008. The application is made by David Kamondo who seeks that the court will find James Gikaria in contempt of the court order. He also prays that the court will order that the original boundary marks will be put on the property Mahiga/Ugachiku/421 at the expense of James Gikaria. The applicant in his affidavit stated that a Certificate of Confirmation issued by this court 31st October 2006 ordered that the property that is Mahiga/Ugachiku/421 be shared equally between him and James Gikaria. The provincial surveyor prepared mutation forms in that regard for the two subdivisions namely parcels number Mahiga/Ugachiku/722 and Mahiga/Ugachiku/723. The land was subdivided in that regard on 12th October 2007. Boundary markings were put in the presence of James Gikaria and his family. Subsequently the applicant found that the boundary markings had been removed by James Gikaria. It is on that basis that he seeks the prayers in the Chamber Summons.

The application although served on James Gikaria on the day of hearing he did not attend. The application therefore was unopposed. In respect of the first prayer the applicant did not seek leave to institute contempt proceedings as required by the law. The law that guides the court in respect of that prayer is in section 5 of the Judicature Act Cap 8. The applicant also did not prove that the order which he alleges the respondent has committed contempt against was extracted and served on the respondent. The first prayer therefore fails. In respect of the second prayer there being no opposition the court finds that the same is merited. The court grants the order that the boundary markings between parcels number Mahiga/Ugachiku/722 and Mahiga/Ugachiku/723 be replaced where they have been removed at the costs of James Gikaria. The court will not order that security be provided since there is no evidence of violence. The court will however order that the chief of Mahiga Location Othaya be present to ensure orderliness. The cost of chamber summons dated 16th January 2008 shall be paid to the applicant by James Gikaria.

Dated and delivered at Nyeri this 9th April 2008.

MARY KASANGO

JUDGE