



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 277 of 2004**

**TERESIA SELEIYIAN SAITOTI ..... PLAINTIFF**

**VERSUS**

**ANN WANJA WAWERU ..... 1<sup>ST</sup> DEFENDANT**

**MARY NASIEKU MUNGAI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

**I: Procedure**

1. In a Succession cause, any dispute that arises between the parties as to the ownership of land belonging to the deceased is heard in a separate suit filed by way of an Originating Summons.

2. The dispute in this case was filed by way of plaint, as the land in dispute was registered in the name of the 1<sup>st</sup> defendant long before the deceased passed away.

**II: Representation/Parties.**

3. Irene Kaloki Kitimet a female adult passed away on the 27 May 2008 at South “B” hospital Nairobi. She had two daughters

**TERESIA SELEIYIAN SAITOTI**

**(married) ..... Plaintiff**

**MARY NASIEKU MUNGAI ..... 2<sup>nd</sup> defendant**

4. Both sisters took out letters of grant intestate as their mother left no will. The two are therefore administratrix of the estate of the late Irene Kaloki Kitimet.

5. **Anna Wanja Waweru** is the daughter of Mary Nasieku Mungai the second defendant herein. She has been sued as the 1<sup>st</sup> defendant and is currently the registered owner of the disputed land parcel.

**III: Background**

6. The deceased, Irene Kaloki Kitimet left a vast estate. From the evidence before court, she had been owner of several properties. All the parties do not dispute that she sub-divided and sold her land Ngong/ngong 27795. It is also not disputed that the two sisters and their children were given portion of share of land elsewhere.

7. According to the evidence of the plaintiff, their mother lived on land parcel LR Ngong/Ngong 128133 (a sub-division). When she passed away, the plaintiff expected the family to meet and to divide the said land equally between herself and her sister, the 2<sup>nd</sup> defendant. A couple of days after her mother was buried, she discovered that the land was transferred to the 1<sup>st</sup> defendant. The 1<sup>st</sup> and 2<sup>nd</sup> defendant were aggressive and failed to agree to a meeting:

**i) Plaintiff case**

8) The plaintiff filed their present suit and alleged that the deceased was under undue influence to transfer the land to the 1<sup>st</sup> defendant. The purported signature/thumb print transferring the property was actually a forgery. She prayed for:-

- i) An injunction to restrain the two defendants from transferring or interfering with the land.**
- ii) That this court should declare the transfer irregularly made and to cancel sub transfer.**
- iii) That this court equally distribute the land parcel Ngong/Ngong 28133.**
- iv) The plaintiff also claimed damages and costs of the suit together with the interest thereon.**

9. On the 23 March 2004 she obtained interlocutory orders (Lenaola J) for an injunction against defendant 1 and 2.

**aa) Defendants Case.**

10. Both defendants gave evidence. Defendant No.1 stated that her main task, as she lived with her grandmother (the deceased herein), was to assist her prepare the title deeds for the various pieces of land that she had. She sorted out all the various land sale transactions and processed the title.

11. Her own title was in effect issued long before the deceased passed away. At the time of her grandmothers death, she was not able to find the title where it was normally kept. She applied for a reissue and it was granted to her. From the pleading before the court it appears that she stated the title deed had been rained on. This was not mentioned during her trial.

12. Her mother, the second defendant stated that she had no interest in the land. She had no knowledge of the transaction. All she knew is that her mother gave land to her daughter.

13. The question now arises as to whether fraud had been proved?

**IV) Opinion**

14. According to the agreed issues before this court the title LR Ngong/Ngong 28133 was registered in the name of Anna Wanja Waweru, the 1<sup>st</sup> defendant and grand daughter to the deceased. This land was part of the original land parcel LR Ngong/Ngong 27795 that was sub divided into 29 plots and sold to buyers/members of the public.

15. The suit land in question was registered in the year 2002 in the life time of the deceased and was accordingly reissued to the 1<sup>st</sup> defendant. The plaintiff has to show to this court that this transfer was irregularly done by the 1<sup>st</sup> defendant. She instead informed this court that the 1<sup>st</sup> defendant secretly transferred the land without informing her. The 1<sup>st</sup> defendant claimed the property was a gift. The

plaintiff claimed it was not and she wants a share. The 1<sup>st</sup> defendant stated that both her mother and the plaintiff were provided with land together with their children.

16. The intention therefore of the deceased was to give her that land. She did so and kept the title for her.

17. In order to prove that the whole transaction was a forgery the documents in question for transfer were required to be referred to the police to confirm the fraudulent transfers. The thumb print of the deceased is with the Registration of Persons who hold her ID Card. After the investigations by police and findings of a criminal court that forgery did occur, then would the plaintiff come to court to have the title revoked as an administratrix of the deceased estate.

18. This was not done. I therefore find no evidence of fraud having been established.

19. The suit herein is dismissed with costs to the 1 and 2 defendants.

DATED THIS 18<sup>TH</sup> DAY OF JUNE 2008 AT NAIROBI.

**M.A. ANG'AWA**

**JUDGE**

C. Nyakundi instructed by C. Nyakundi & Co. Advocates for the plaintiff/applicant present

T.O. Moindi instructed by T.O. Moindi & Co. Advocates for the defendant/respondent - present