

error on the face of the record to say that the 3rd objector had received more than his share of the estate when he in fact only received 0.10 hectares. The other issue is that the court failed to take into account the debt of Kshs. 68,547/= which was due to the 3rd objector as per the decree in SPMCC No. 63/1997-Nicholas Njeru Njagi vs Mbaluto Ndonye & Another.

6. I have carefully considered the issue in dispute and I sadly do not see merit in the matter regarding the size of the plots in question. The learned judge relied on the expert advice of the District Land Registrar who came up with a concise report that the two plots total 0.1801 hectares each. The 3rd objector has received and admits receiving 0.10 hectares. The difference in the two computations is 0.0801 hectares which in my view is not significant enough to overturn the earlier decision. In any event, land is not measured to the exact mathematical figure but near as possible to it hence the often used phrase “– acres or hectares or thereabouts.” There is always a plus or minus element in computation and assuming that my view is erroneous, I completely see nothing to review in this case because I see no error on the record. An error on the record is one which is so glaring as to warrant no evidence or debate and I see none in this case and I have said why.

7. However, on the issue of Kshs. 68,547/= it is not denied that there is a decree against the deceased in that amount. If that be so, when the learned judge said that the 3rd objector is not entitled to any share of the deceased’s estate, that amount was not taken into account and there is sufficient reason to review the orders made on 26.5.2005 and to include that sum as a debt due from the deceased’s estate. The orders are thus reviewed and the Application allowed only to that extent.

8. The third objector shall have only ½ costs of the Application since he has not wholly succeeded.

9. Orders accordingly.

Dated and delivered at Machakos this 24th day of September 2008.

Isaac Lenaola

Judge

In the Presence of: Mr. Makau for Applicant

Mrs Nzei for Respondent

Isaac Lenaola

Judge