

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE 542 OF 2004

IN THE MATTER OF THE ESTATE OF NGATIA NGURIBU

ALIAS NGATIA S/O NGURIBU..... DCD

AND

BENSON NGUYO NGATIA.....PETITIONER

RULING

When this matter came up for confirmation of grant on 22nd February 2008 the court recorded an order that the suit property TETU/IHURURU/126 be shared equally between the petitioner and the protestors namely; Joseph Ngatia Nderitu and Ruth Wanjiku Nyatoro. That order was recorded after the petitioner conceded that the other property mentioned in the application for confirmation did not belong to the estate. The petitioner has now brought an application dated 9th April 2008. In that application the petitioner seeks for the cancellation of the grant issued on 22nd February 2008. The ground upon which he seeks that prayer is that his counsel misunderstood his instructions to the effect that property TETU/IHURURU/126 was to be shared with him getting half of it and the other half to go to the two protestors equally. He said that those were instructions that he gave to Samuel Ndungu Mukunya advocate when he appeared in his chambers. On 22nd February 2008 Mr. Gori Advocate appeared in court from that firm and due to the misunderstanding failed to represent his correct instructions. Learned counsel Mr. Gori also swore and affidavit confirming the same. The application was opposed by Ruth Wanjiku Nyatoro on the basis that it was an after thought because the applicant petitioner was in court when the grant was confirmed. I have considered the application and the opposition raised by Nyatoro. From the outset I would state that the order made on 22nd February 2008 was not a consent order but rather was a court order. That being the case this court can revisit that order. In perusing the various documents in this file I find that the petitioner was the son of the deceased. Although it is not very clear what relationship Nyatoro had to the deceased. The other protestor Nderitu is said to have been a grandson of the deceased. That being the case I find that the orders sought by the petitioner are merited in view of the explanation given by him and in view of his relationship to the deceased. The orders of this court are as follows:-

- 1. That the confirmed grant issued by this court on 22nd February 2008 is hereby cancelled.***
- 2. That L.R. TETU/IHURURU/126 be divided into two equal shares with one such share being given to Benson Nguyo Ngatia absolutely and the other half to be shared equally between Joseph Ngatia Nderitu and Ruth Wanjiku Nyatoro.***
- 3. There shall be no orders as to costs in respect of the summons dated 9th April 2008.***

Dated and delivered at Nyeri this 16th day of October 2008.

MARY KASANGO

JUDGE