



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Misc Succession Appli 40 of 2001

IN THE MATTER OF THE ESTATE OF NJERU M'ITEWA.....(DCD)

JOYCE NGIMA NJERU.....1ST APPLICANT

DANIEL NJUE NJERU.....2ND APPLICANT

VERSUS

ANN WAMBETI NJUE.....RESPONDENT

RULING

These proceedings arise out of Succession case in respect of the estate of Njeru M'Itewa who died on 16/11/1990.

A grant was issued and confirmed on 24/8/1994. This application is seeking orders to revoke the said grant issued to Anna Wambeti Njue and Joyce Ngima on the grounds set out in the application namely:-

1. the proceedings to confirm the grant were defective in substance.
2. that the confirmation was obtained fraudulently by the making of false statement or by concealment from the court of something material to the case.
3. that the confirmation of the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or in advertently
4. That the confirmed grant has become in operative and useless through subsequent circumstances.

The grant was nevertheless issued to the sons of deceased.

1. Daniel Njeru and
2. Obadiah Muriuki Njeru on 25/3/1994.

Before the expiry of period prescribed for confirmation of the Grant Anne Wambeti filed a protest against confirmation of the grant. The protest was heard by court and ruling made on 24/8/1994. The result was that the deceased asset Plot No. Ngandori/Kiriari/2295 was to be shared equally between Applicants/Petitioners and the Objectors.

Thereafter on 24/8/1994 the grant was confirmed and assets distributed according to the court order. The land parcel **Ngandori/Kiriari/2295** was subdivided into two portions; **Ngandori/Kiriari/3721** for Anna Wambeti Protestor and **parcel No. 3722** for Njeru M'Itewa. The grant which was issued Obadiah Muriuki Njeru and Daniel Njue Njeru cannot be revoked as no grounds have been shown to warrant such an order. There are on record some documents by James Nyaga and Benson Nyaga objecting to making a grant of representation on the petition of Obadiah Muriuki and Daniel Njue Njeru but there is no record of any orders made in this respect.

It is my finding that the protest on confirmation or grant was decided upon by the courts and no appeal has been made against the Ruling of the court. Any irregularities in the ruling should have been challenged in an appeal. The confirmation order was that land be shared between the Petitioners Daniel and Obadiah Muriuki and their mother Joyce Ngima Njeru (widow of deceased) and Ann Wambeti. The upshot is that the court finds there is no ground laid out to warrant revocation of the grant issued to Daniel Njue Njeru and Obadiah Muriuki Njeru. There is evidence that the Obadiah is now deceased. The administrator of the Estate is now Daniel Njue Njeru. This application is therefore dismissed with no order as to costs since the matter involved families.

Dated this 10th May, 2007.

J. N. KHAMINWA

JUDGE

10/5/2007

Khaminwa –Judge

Njue –Clerk

Daniel Njue- Applicant present in person

Ann Wambeti Njue- Respondent present in person.

Read in open court on 10/5/2007.

J. N. KHAMINWA

JUDGE