

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Succession 21 of 2005

IN THE MATTER OF THE ESTATE OF MBITI MUTHIGIRE...(DCD)

JANE WANGUI NGURU.....APPLICANT

VERSUS

DAVID MWANIKI MBITI1ST RESPONDENT

THOMAS MUGO MBITI.....2ND RESPONDENT

STEPHEN MUCHOKI MBITI.....3RD RESPONDENT

JUDGMENT

The Applicant filed Summons to revoke the grant issued to first Respondent on 16.7.1999. She gave grounds of application as follows:-

(a) Grant was obtained fraudulently by making false statement and the concealment of some material facts relevant to the cause and other grounds set out in the application.

In supporting affidavit she swears that she entered into a sale agreement with the deceased for purchase of property parcel **No. Nthawa/Gituburi/1765** and that she paid purchase price and took possession during the lifetime of deceased. She gave evidence in court and confirmed that she never went to Land Board for Land Board Consent as required under Land Control Act Cap. 302.

Therefore the sale became void after prescribed time expired. She was not entitled to be informed of succession proceedings as she was not a beneficiary. She has not proved the grounds she has put forward. Then she says she had filed an Originating Summons claiming the land but the suit is 45/2001 was dismissed and she had not taken any appeal against dismissal. The position as shown by the evidence of both sides is that the Applicant was a purchaser of the land. There is no reason to doubt her on that issue.

However she never sought consent of the Land Board. The agreement became unenforceable up to now. Her remedy is to claim back her purchase price paid as provided under Land Control Act. In the case of Succession her claim is against administrator since she can only be a creditor of the estate.

I therefore find no proof of the grounds for the revocation of the grant. The application is dismissed with costs.

Dated this 3rd May, 2007.

J. N. KHAMINWA

JUDGE