

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 59 of 1997

MARGARET WANGITHI NDUTHU.....PLAINTIFF/APPLICANT

Versus

NDUTHU WANJOHI.....1ST DEFENDANT/RESPONDENT

MILKAH MUTHONI NDUTHU.....2ND DEFENDANT/RESPONDENT

RULING

The parties herein had their matter determined by the Provincial Land Dispute Tribunal Committee of Central Province on the 12th February 2003. The hearing related to the suit property namely IRA-INI/GATUNDU/110-5.6 Acres. The decision of the Appeals Committee was that the Applicants' two wives would get each 1.9 acres of that land whilst he would retain 1.8 acres thereof. The two wives are **MARGARET WANGITHI NDUTHU** and **MILKAH MUTHONI NDUTHU**. That award was read by the Court on 2nd May 2003. The parties were given 30 days to file any objection. To date no objection has been filed. The Applicant has now filed a Chamber Summons dated 2nd November 2004. It brought under *Section 3A* of the Civil Procedure Act and *Order XLV Rule 17 (2)* of the Civil Procedure Rules. The Applicant seeks that Margaret Wangithi Nduthu be ordered or compelled together with her family to vacate the Applicant's land namely parcel No. **IRA-INI/GATUNDU/858**. In support of that application the Applicant, that is Nduthu Wanjohi, stated that he is the registered owner of that parcel of land. He attached to the affidavit a copy of the official search. He confirmed that he registered **IRA-INI/GATUNDU/857** in the name of Margaret Wangithi Nduthu. That before he made that transfer the Respondent's house and that of her family was spread all over on the original title. That those houses are still where they were, which happens to be the parcel of land registered in the Applicant's name. He therefore concluded by saying that he seeks that the Court will order the Respondent to remove her houses on the portion of land. The Respondent filed a Replying Affidavit where she stated that her son has a house on the boundary between Plot No. 857 and 858. That in respect of 858 that property is owned by the Respondent and her co-wife. She further deponed that the Applicant had in 1995 made a commitment to remove the Respondent's house from where it is onto her portion of land namely parcel No. 857 at his own expense. That to date he has failed to do so. Having considered the application and the opposition by the Respondent, it is perhaps essential to explain that the original title which was the subject of the Tribunal thereof, was **IRA-INI-GATUNDU/110**. Following the hearing of the Tribunal the award of the Court was that the Applicant do transfer 1.9 acres to both of his wives. He was to retain 1.08 acres for himself, which the Tribunal stated he would hold in trust for his two wives. It is that portion of 1.8 acres that the Respondent is said to have built her house together with her family. I find that there is no reason why the Respondent having been allocated 1.9 acres in accordance with the award of the Tribunal and is indeed registered as the proprietor of parcel No. 857 should continue to occupy the Applicant's property.

Accordingly I find that the Application before Court is merited and is hereby granted as prayed in prayer No. 1, that is, Margaret Wangithi Nduthu be removed from property **IRA-INI/GATUNDU/858** together with her family within 30 days from the date of this ruling. The Court does not grant any costs to that application because it involves family members.

Dated and delivered at Nyeri this 27th day of July 2007.

MARY KASANGO

JUDGE