

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 19 of 2004

CHARLES MURITHI KUNGU.....PLAINTIFF

VERSUS

ANNE NJOKI NJENGA.....DEFENDANT

RULING

This originating summons was filed by the Applicant Charles Murithi Kungu pursuant to the provisions of rules 41 (3) of the P&A Rules. The dispute originates from the distribution of the estate of the late Bedan Kungu Kayo whereby the Respondent objected to the distribution of the property known as plot No. 412 Thome Framers No. 5 Ltd also known as LR No. 13330/174.

It was ordered that the issue of the determination of the said plot be done by way of an originating summons. In addition to the supporting Affidavit filed by the Applicant, he also adduced oral evidence during the hearing. The matters deposed to in the affidavit and which were elaborated in his evidence can be summarized as follows: -

The Applicant is one of the sons and beneficiaries of the late Bedan Kangu Kago (deceased). The letters of administration intestate were granted to the Applicant along with his other siblings. The said grant was confirmed on 2nd October, 1998 whereby the said property was distributed to the applicant which Applicant claims was in accordance with his late father's wishes.

The Respondent filed an objection seeking for the revocation of the said grant on the ground that she was the beneficial owner of the shares that gave rise to the said plot. By a ruling dated 19th December 2002, this particular property was removed from the deceased's estate and the matter was directed to be determined by way of an Originating Summons. Thus during the hearing the Applicant presented the original receipts Nos. 650 and 666 which were issued to his late father in 1975 for the payment of Kshs. 3,100 being towards, entrance fee to the Company known as Thome No. 5 farm and payment of shares for Thome No. 5 farm. According to the Applicant, the Respondent has not presented any material to support her allegations of ownership of the said plot.

The Respondent too did not attend court during the hearing despite the fact that the date for hearing of the matter was taken by mutual consent.

I have considered the application, the supporting affidavit and the evidence of the Applicant and in the absence of any evidence by the Respondent to controvert the same, I am satisfied that the Applicant has proved his case on a balance of probability that suit property belonged to the late Bedan Kungu Kago.

Accordingly the prayers sought by the Applicant in the O/S dated 12th October, 2004 be and are hereby allowed with costs to the Applicant.

It is so ordered.

Ruling read and signed on 20/1/2006.

M. KOOME J.