



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

Civil Case 371 of 1993

EVERYNE NJERI NJUGUNA.....PLAINTIFF

VERSUS

MUNGAI KAMAU.....DEFENDANT

RULING

By this Chamber Summons dated 13th May 2005 and expressed to be brought under Order XX1 Rule 56 AND 57 OF THE civil Procedure Rules and Section 63 of the Civil Procedure Act seeks orders:-

- (a) That the court be pleased to declare that the land parcel LR NO. LOC.5/KABATI/749 rightfully belongs to the Estate of STEPHEN GUCHU GICHARU herein represented by the Objector in consonance thereto the Executive Officer of this court does execute and sign all forms and/or transfer documents for land parcel No. Loc.5/KABATI/749 in favour of the Estate of the late STEPHEN GUCHU GICHARU.
- (b) That stay of execution of decree and all subsequent orders in the case herein do issue until the hearing and determination of this objection proceedings.
- (c) That witness summons be issued against one RICHARD NGANGA KAMIRO Advocate to come to court and produce all primary documents involving the transactions for sale of land parcel No. Loc.5/KABATI/749 between the Defendant and Stephen Guchu Gicharu.
- (d) The court through the Registrar of this High Court be pleased to call for Thika RMCC No.31 of 1993 for purposes of verification and authentication of the proceedings and the record therein.
- (e) The costs of the objection proceedings be provided for.

The application is based on the grounds:

- (i) That Stephen Guchu Gicharu (deceased) had purchased land parcel NO. LOC. 5/KABATI/749 from the Defendant vide Sale Agreement dated 18th November 2002.
- (ii) That the said Stephen Guchu Gicharu (deceased) in order to obtain title to land parcel No. Loc.5/KABATI/749 sued the defendant vide Thika RMCC NO.31 OF 1993 whereof judgment was given on 1st February 1993 and a decree issued on 4th February 1993.

(iii) That the firm of Richard Nganga Kamiro acted for both Stephen Guchu Gicharu (deceased) and the Defendant and it was the said firm which has custody of all the primary documents involved in the transaction involving the sale of land parcel NO. LOC.5/KABATI/749.

The application is also supported by an affidavit sworn by the Applicant/Objector in which she avers that on facts similar to those contained in the grounds on which the application is based and further she avers that she is in possession of the suit land.

The application is opposed by the plaintiff who has filed replying affidavit in which she avers that the prayer by the Objector that the court do declare that land parcel NO.LOC.5/KABATI/749 belongs to the estate of Stephen Guchu Gicharu and that the court do execute the transfer documents in favour of the Estate does not lie as the plaintiff is a bona fide purchaser vide Sale Agreement dated 17th August 1991 prior to the deceased purchase. That judgment was entered by consent and decree issued and the same was never challenged by the Defendant/Respondent.

That if the Objector has any lawful claim against the defendant the same ought to be settled in RMCC NO. 31 OF 1993 Thika wherein there is a decree issued and in this case by filing objection proceedings. That the sum of Sh.100,000/= only was remitted by Kamiro R.N. & Co. Advocates in the year 2001 and the balance together with interest still remain unpaid.

That since the Objectors husband died on 15th June 2001 and the Defendant in 1995 and no substitution having been made in RMCC NO. 31 OF 1993 Thika, the said claim became extinguished and this objection is merely a means by the Objector to advance her claim which has been extinguished in the lower court.

First prayer (b) of the Objector's Chamber Summons dated 13th

May 2006 is not sustainable. Sale Agreement per se is not sufficient to transact a transfer. The suit land is Agricultural land and there are other procedures to be complied with i.e. Land Control Board consent so that it is not in order for the officer of the court to sign the transfer documents on behalf of the transfer.

Secondly prayer c is also not sustainable in that apart from the Sale Agreement the Objector does not state what other documents that are in possession of the advocate. The Objector being represented, his advocate should avail legal advise as to what documents are required which are said to be primary documents.

Prayer (d) is also not sustainable. It is upon her lawyer to call for certified copy of proceedings, judgment and decree said to be contained in the Thika RMCC NO.31 OF 1993. Consequently the objectors application fails and the same is dismissed.

Dated and delivered at Nairobi this 28th day of March 2006.

J.L.A. OSIEMO

JUDGE