



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 4 of 1986

HANNAH NYAMBURA GITONGA.....APPLICANT/PLAINTIFF

(Sub- For Gitonga Warugu)

Versus

MUTHONI WARUGU.....RESPONDENT/DEFENDANT

RULING

In the Chamber Summons dated 4th July, 2005 the Applicant wants the following orders:-

- “1. THAT the award elders made in acres while suit land Thिंगingi/Kianjogu/23 is registered in Hectares and is of two houses the word 1 acre be hereby changed to 1 Hectare.**
- 2. THAT the consent issued to respondent by Land Board be hereby amended to read 1 Hectre.**
- 3. THAT sub-division done by respondent On 23rd June, 2005 be hereby declared null and Void.**
- 4. THAT District Survey and District Land**

Registrar do issue 1 Hectare title to applicant and 1.14 Hectare title to Respondent and re-survey being done.

- 5. THAT costs of this application be provided for.**

The Chamber Summons is supported by the affidavit dated 4th July, 2005 sworn by Hannah Nyambura Gitonga.

After reading the court case record including the Chamber Summons and relevant affidavits supporting or replying, I have no doubt in my mind that the chamber summons dated 4th July, 2005 is misconceived, in competent and unmaintainable for the following reasons:

Firstly, the parties were each claiming exclusive ownership of the whole suit parcel of land, Thegenge/Kianjogu/23, which was clearly shown in their pleadings as measuring approximately 2.14 hectares. They wanted their case be referred to elders for arbitration and this court did refer the case to elders for arbitration as requested by the parties in 1986. The elders filed their award which was

subsequently adopted by this court as a judgment of the court when the Applicant's chamber summons dated 22nd August, 1991 to set aside that award was dismissed on 13th February, 1992.

In the grounds in the affidavit supporting that Chamber Summons dated 22nd August, 1991, the Applicant, Hannah Nyambura Gitonga had paragraphs 9 and 10 where she claimed half share of the suit parcel of land. That was in an application where she knew very well the elder's award had given her only one acre and that one acre was specific in the award. The elders said that they gave the applicant that one acre

“on humanitarian grounds.”

That is suggestive that the elders felt that on merits, the Applicant did not deserve any share in the suit parcel of land. But because of humanitarian feelings, they saw it fit to give the Applicant an acre instead of leaving her with nothing.

In those circumstances the Applicant should have felt grateful and her conduct by then suggests she was indeed grateful as and it appears that after her application dated 22nd August, 1991 was dismissed on 13th February 1992, and the award adopted as a judgment of this court, the Applicant never appealed to the Court of Appeal. She kept quiet until the middle of the year 2005 when she thought that if she came back to resurrect the dispute, she may to-day get what she failed to get 14 years ago.

Meanwhile and this is the second point, execution of the judgment was taking place. The Respondent complying with the judgment sub-divided the suit parcel of land into two portions numbering 1206 and 1207 measuring 1.735 hectares and 0.405 hectare respectively. To do that, consent of the Land Control Board was obtained when the Applicant in this chamber summons before me now was there but could not stop it. The sub-divisional transaction was finally registered by the Land Registrar after the relevant survey had been done.

The Respondent Muthoni Waruguru Alias Anna Muthoni Warugu who is the registered proprietor of both portions of land from the sub-division has told me during the hearing of this chamber summons dated 4th July 2005 that she was willing to transfer the portion numbered 1207 to Hannah Nyambura Gitonga and that the transfer has not been done because Hannah Nyambura Gitonga has refused that portion of land saying that it is small. I have said it is 0.405 hectare according to the relevant certificate of official search issued by the Land Registrar on 19th May, 2006. That measurement is equivalent to one acre and that is in compliance with the award of elders as adopted in the judgment of this court on 13th February, 1992.

Thirdly therefore, this court to-day has no power, through Chamber summons dated 4th July 2005, to interfere with that judgment; has no power to interfere with the consent of the land Control Board, has no power to interfere with the registration of the sub-division by the Land Registrar and therefore has no power to interfere with the survey which was done to sub-divide that land into numbers 1206 and 1207.

Fourthly, the said chamber summon dated 4th July, 2005, having come after the dismissal of Hannah Nyambura Gitonga's Chamber Summons dated 22nd August, 1991, the former Chamber Summons that is the one dated 4th July, 2005 before me now is bad in law as the same is *resjudicata*.

From what I have said above therefore, Hannah Nyambura Gitonga's Chamber Summons before me dated 4th July, 2005 be and is hereby dismissed with costs to the Respondent Muthoni Waruguru.

Dated this 15th day of June, 2006.

J. M. KHAMONI

JUDGE