

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1301 of 2004

JUDITH WAMBUI GATEI1ST PLAINTIFF

FRANCIS MUIRURI GATEI2ND PLAINTIFF

VERSUS

NGUGI MUIRURIDEFENDANT

RULING

The defendant **Ngugi Muiruri** moved the court by Chamber Summons seeking an order to

“strike out the plaintiff’s suit with costs to the defendant, “ on the grounds that the same is “res judicata”, and therefore “scandalous, frivolous and vexacious”.

The application is dated 10th May, 2005.

The plaintiffs filed grounds of opposition, one of the grounds being that

“the applicant (defendant) is guilty of concealment and or non/disclosure of all matters in H.C Succession Cause No. 1775 of 1993”, which is material and or has a bearing to this suit”.

The advocates representing the parties **CONSENTED** to **HAVE THE APPLICATION DECIDED BY WRITTEN SUBMISSIONS**, which they prepared and presented to court on 27.3.2006.

However, on perusal of the application plus the supporting affidavit, and annexures, as well as the Grounds of Opposition filed, I discovered that the dispute herein revolves around a piece of land namely GITHUNGURI/IKINU/76, which was the subject of dispute in H.C. Succession Cause No. 1775 of 1883, which was decided by my order of 8th October, 2002. In these circumstances, I find that the justice of the case requires that the present application be heard and determined by **ANOTHER JUDGE**.

In the circumstances therefore I hereby **DISQUALIFY** myself from handling this matter and direct that the same be placed before any other judge who did not handle the Succession Cause which has given rise to this case.

Dated at Nairobi this 9th day of June, 2006.

JOYCE ALUOCH

JUDGE