

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 197 of 1992

CATHERINE MWENGWA PETITIONER/RESPONDENT

VERSUS

PETER BUNDI M'ITWAMWARI OBJECTOR/APPLICANT

RULING OF THE COURT

The applicant's application is a chamber summons dated 20.12.2005 by which the applicant seeks 5 orders, among them confirmation of the Grant of Letters of Administration issued to the petitioner on 9.5.2005. The applicant also prays that the petitioner/respondent be compelled to sign all relevant documents, namely form RL 19 for application to the Land Control Board for subdivision of land parcel No. NYAKI/GIAKI/668 and also that she should be compelled to sign the land transfer forms. Failing the petitioner's signatures, the applicant prays that the Executive Officer be empowered to sign all the relevant documents in that behalf. The applicant also seeks an order to compel the petitioner/respondent to surrender the original title deed to facilitate the registration of the transfer forms.

The applicant has supported the application with his sworn affidavit dated 20.12.2005 in which he reiterates the details of the prayers he seeks from the court. He states therein that the petitioner/respondent has been reluctant to move the court for confirmation of the grant issued to her on 9.5.2005, despite the fact that she has not appealed against this honourable court's judgment dated 9.5.2005.

The application is opposed. The respondent, by her affidavit made and sworn on 8.6.2006 contends that this honourable court's judgment of 9.5.2005 is wrong in that the court misinterpreted sections 27(a), 28 and 30 of the Registered Land Act Cap 300. Further that according to her, the applicant and his co-objector should get only two acres out of NYAKI/GIAKI/668 and not 4 acres as ordered by this court.

The issue for determination by the court is whether this application is properly before this court. The minor consideration is whether the respondent's contention should be entertained in opposition to the application?

After a careful consideration of the application, I find that the application, which is meant to be an application for confirmation of grant is too loaded with other irrelevant issues. First of all, the application is wrong in form. For this reason, the court is unable to allow it. The applicant should file a proper application in accordance with the probate and Administration Rules. Once that is done and the orders sought are granted, the law makes provision as to what he should do if the respondent refuses to sign the requisite transfer documents. It is not for this court to deal with those issues now.

As for the respondent's replying affidavit, the same is found to be scandalous and is thus expunged from the record. Since 9.5.2005, the respondent had time either to appeal against the judgment of this honourable court or to apply to have the same reviewed if there was/is an error apparent on the face thereof. The respondent has done neither of the two.

In the result, this application is found to lack merit. The same is dismissed in its entirety. As the respondent has also not succeeded in opposing the application, each party shall bear his/her own costs.

Orders accordingly.

Dated and delivered at Meru this 31st day of July 2006.

RUTH N. SITATI

J U D G E