



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

Civil Case 166 of 2006

ELIZABETH GAKENIA MURIUKI.....
.....PLAINTIFF

VERSUS

DISTRICT LAND REGISTRAR NYERI.....
.....DEFENDANT

RULING

By this Originating Summons expressed to be brought under Order XXXVI Rule 3F of the civil Procedure Rules and Section 3A of the Civil procedure Act the Applicant seeks Orders:

1. That the District Registrar Nyeri cancel the name of JACKSON KIHUHO MURIUKI from the Registrar as the proprietor of property Title L.R. NO. KIMUKUYU/MBOGO/236.
2. That the District Land Registrar Nyeri register the Applicant as the true proprietor and issue to the Applicant a title deed to the property and
3. That the costs of this application be provided for.

The application is based on the following grounds:

1. The said JACKSON KIHUHO MURIUKI by means of false and fraudulent representation induced the District Land Registrar Nyeri to issue a title deed in his name in respect of the property and caused his name to be entered in the Register.
2. The said JACKSON KIHUHO MURIUKI was convicted of procuring execution of document by false pretence on the 26th February 2003 at the Chief Magistrate's Court at Nairobi Criminal Case No. 1033 of 2002.
3. The name of the said Jackson Kihuhu Muriuki still appears in the Land Register at the Nyeri Lands Office as the proprietor of the property despite his conviction.
4. The delay in entering the name of the Applicant in the register as the rightful proprietor of the property is a denial of her legal right to the property which was bequeathed to her under the last will of

the late Tabitha Wambui Muriuki (the deceased) dated 21st December 1989.

5. The delay in entering the name of the Applicant as the legal proprietor of the property has caused prejudice to the Applicant and her interests.

The application is also supported by an affidavit sworn by Elizabeth Gakenia Muriuki the applicant herein who has deponed that her mother the late Tabitha Wambui Muriuki by her last will dated 21st December 1989 bequeathed all the property known as KIRIMUKUYU/MBOGOINI/236 (the property) solely to her as indicated in the said will copy attached herein (PW1); that as sole executrix and trustee of the said will the court issued to her Grant of Probate of written will on 23rd February 1995 and Certificate of Grant on 22nd September 1995 (copies attached herein PW2 and PW3); that the said Jackson Kihuhu Muriuki was convicted of the offence of procuring of a document by false pretences; that the name of Jackson Kihuhu Muriuki still appears on the Land Register at Nyeri District Land Office despite the fact that the making of the said entry resulted from fraudulent and false representations made by her brother; that the name of the said Jackson Kahuhu Muriuki has not been removed from the Land Register at Nyeri District Lands Office despite this entry having been declared a forgery by the court; and that the delay in the cancellation of the name of the said Jackson Kihuhu Muriuki and issuance of a title deed in her name has denied her the right to enjoy the use of the property and has been greatly prejudicial to her interests.

Mr. Monari for the applicant submitted that the suit property was initially registered in the name of Tabitha Wambui Muriuki the deceased mother of the Applicant who had bequeathed the same to the applicant. But after her death, the applicant's brother Jackson Kihuhu Muriuki falsely and fraudulently induced the Land Registrar Nyeri to register the suit property in his name. He was consequently arraigned in court and was convicted with the offence of procuring execution of a document by false pretence contrary to Section 314 of the Penal Code on 20th February 2002 at the Chief Magistrate's Court at Nairobi in Criminal Case No.1033 of 2002 and the entry of Jackson Kihuhu Muriuki was declared a forgery by the court and is now asking the court for orders that the name of the said Jackson Kihuhu Muriuki be cancelled from the Register and register the applicant Elizabeth Gakenia Muriuki as the proprietor of the same.

This application is brought under the provisions of Order XXXVI Rule 3 which empowers the court to rectify the title. Section 143(1) of RLA Cap 300 reads:

1. Subject to Subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.
2.

The court having declared that the registration of the said Jackson Kihuhu Muriuki was obtained by fraud and the said Jackson Kihuhu Muriuki, having been convicted with a criminal offence in respect of that fraudulent registration, the only honourable thing this court can do is to order the cancellation of his name from the register.

Consequently the Applicant's application is allowed in terms of prayers 1, 2 and 3 of the Originating Summons dated 6th February 2006.

Dated and delivered at Nairobi this 13th day of September 2006.

J.L.A. OSIEMO

JUDGE