

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 115 of 2005

KAKUZI ROAD QUARRY WORKS LTD.....PLAINTIFF

VERSUS

MICHAEL NGANGA WAINAINA.....1ST DEFENDANT

PAUL KAMWERU WAINAINA.....2ND DEFENDANT

PETER NGIGI WAINAINA.....3RD DEFENDANT

AMBROSE KARANJA WAINAINA.....4TH DEFENDANT

TABITHA WAMBUI WAINAINA.....5TH DEFENDANT

RULING

The Defendant is the allottee of portions of L.R Thika 14/968 and Thika 14/969 of about 3.2 hectares. The Company is owned by the brother of the Respondents and his wife. He took out letters of administration to his father's estate. No confirmation of grant has I am informed been issued. The land in question from which the land is allotted is said by the Defendants to be a portion of the land owned by the deceased father of the Defendants and the director of the Plaintiff Company.

I have considered the contents of the Supporting Affidavit, Replying Affidavit and Supplementary Affidavit. From the evidence adduced it appears that the land was the subject matter of an agreement between the Commissioner of Lands and the deceased dated the 1/4/1965 to the deceased father of the Defendants including the director of the Plaintiff.

In order to resolve the dispute between the parties and children and beneficiaries of the deceased it is necessary for the grant to be confirmed and in the proceedings thereon orders made as to which of the beneficiaries is entitled to the land claimed by the Plaintiff. I am not convinced that Applicant has acted with clean hands.

The Applicant has not in my view shown it has at present a prima facie case with a probability of success. In any event damages would be an adequate remedy.

In the result I am not prepared to grant the relief sought and dismiss this application with costs to the Respondent.

DATED and DELIVERED at NAIROBI on 18th March 2005.

P.J RANSLEY

JUDGE