



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 778 OF 1986**

**ALFRED NDUNGIRO (DECEASED)**

**RULING**

This is an application by Sabina Wambui Ndundiro for an order that the order made on 9.10.2000 giving her portion 1 represented by Land parcel No. 357 of Original title No. Dagoretti/Waithaka/126 be reviewed. The application is made under section 3A Civil Procedure Act and Order XLIV Civil Procedure Rules.

The application is supported by the affidavit of Mr. Peter Ngoge – Advocate for the applicant. It is also supported by the further affidavit of Sabina Wambui Ndundiro.

The grounds of the application are stated on the body of the application and in the affidavit.

The Respondent is Esther Wambui Njage who is a widow of Njage Ndundiro. Njage Ndundiro is a son of the applicant and was coadministrator of the estate of his father Alfred Ndundiro together with the applicant. The applicant as the surviving administratrix of the estate of Alfred Ndundiro sub-divided Land Parcel No. Dagoretti/Waithaka/126 into six portions numbered 1 to 6 which were subsequently named as land parcel numbers 857, 858, 859, 860, 861 and 862 respectively. In a dispute between applicant and Respondent as to which portion should be allocated to the respondent I ruled on 9.10.2001 that Sabina Wambui Ndundiro should be registered as proprietor of parcel No. 359 while Esther Wambui Njage should be registered as proprietor of parcel no. 357. I made that decision after hearing the evidence and I gave the reason for that decision.

The decision was based on the physical occupation of the land before the dispute arose. I considered all the relevant facts before I reached the decision.

I have considered the grounds on which the application is brought. They show that applicant is not satisfied with the findings of facts and the decision of the court. It is not alleged that there is discovery of new and important evidence or any error apparent on the face of the record. It is not alleged that there is any sufficient cause for reviewing the decision. It is clear that applicant is asking court to sit on appeal against the decision. The court cannot sit on appeal against its own decision.

The further affidavit shows that Esther Wambui Njage and her husband had sold a portion of original sub division portion No. 1 now parcel No. 357 to Boro Kimani and that Sabina Wambui Ndundiro had filed HCCC No. 2951/95 against Boro Kimani. By the suit Sabina Wambui wanted Boro Kimani to be restrained from building on the portion sold him. The court granted an interlocutory order of injunction pending the determination of the present succession cause.

The agreement of sale attached to the further affidavit shows that it is Njage ndundiro (Respondents husband and not the Respondent who had sold a portion to the wife of Boro Kimani.

The fact that respondents husband had sold part of the share of his inheritance is not an important

matter in the dispute between applicant and respondent because firstly, applicant is not disputing that her deceased son was entitled to a share of the estate and that that share should go to the respondent.

Secondly, the respondents husband could deal with his own share of inheritance in the way he liked. If he sold a portion of his share of inheritance to Boro Kimani and respondent is willing to transfer that share that is not the concern of the applicant who has her undisputed share of the estate.

Lastly, Applicant had possession of all the facts relating to that sale and to the suit HCCC NO. 295/95 at the time the dispute between her and respondent was heard. She did not the issue now raised. It is not a discovery of new matter or evidence. The issue is infact raised as an after thought. In any case the issue is not important and cannot be a basis for reviewing the decision on the physical location of the applicant's or respondents share of the land.

For the forgoing reasons I am satisfied that the application is frivolous and without any merit.

I dismiss it with costs to the Respondent

E. M. Githinji

Judge

8.10.2002

Mr. Ngoge fro applicants present Miss Mwaura for Respondent present Mr. Ngoge I apply for certified copy of proceedings and Ruling. I also apply for leave to appeal.

E. M. Githinji

Judge

Miss Mwaura - No objection

E. M. Githinji

Judge

Order: 1. Leave to appeal from todays Ruling granted

2. Ruling and proceedings to be typed and supplied as prayed

E. M. Githinji

Judge