

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 207 of 2005

JOHN WACHIRA 1ST APPLICANT

SUSAN W. MUCHIRI 2ND APPLICANT

DAVID M. MUCHIRI 3RD APPLICANT

JOSEPH MUTHIKA MUCHIRI 4TH APPLICANT

VERSUS

JOSEPH MURIUKI MUCHIRI RESPONDENT

RULING

The applicants are seeking in the instant application that the respondent be ordered to execute all relevant documents to facilitate the survey, subdivision and distribution of parcel of land No.NYANDARUA/NGORIKA/

87 to all the beneficiaries. In default, they are praying that the court directs the Deputy Registrar of this court to execute the said documents. Finally they would like the court to order the removal of the restrictions placed against the suit property.

It is the applicants' contention that the suit property was registered in the name of the respondent as the administrator of the estate of the late Muchira Gatika in Nakuru High Court Succession Cause No.445 of 1994. That they are entitled to share the suit property as the sons and widow of **HCCC.NO.207 OF 2005 (O.S.)** the deceased, respectively. That the respondent has failed and/or refused to cause the suit property to be distributed to the beneficiaries.

On 1st August, 2005 the applicants brought an originating summons to compel the respondent to distribute the suit property to them. They also sought a further order that the court determines their respective shares.

The court (Koome, J) in a ruling dated 6th July, 2007 granted the application and ordered that each of the applicants, except Susan Muchiri (the widow) and the respondent to get 15 acres of the suit property. The widow and Alice Njoki (described as sister) were to get 17 and 3 acres respectively.

The applicants have now brought the present application arguing that the respondent has failed and/or refused to comply with the distribution as ordered by the court.

The application and the hearing notice were duly served upon the respondent but failed to reply to the application or attend court during the hearing of this application. Although the application proceeded *ex parte*, it remains the duty of the applicants to prove their claim on a balance of **HCCC.NO.207 OF 2005 (O.S.)** probabilities. They have alleged that the respondent was ordered to distribute the suit property but has refused or ignored the order.

There is no doubt that such an order was made. I can observe that the Certificate of Confirmation of a Grant issued on 20th March, 1995 in respect of the deceased person does not name the applicants as beneficiaries. The entire estate was to vest in the respondent. A part from a faded copy of certificate of

confirmation, I do not have the benefit of the other details in the succession cause. The respondent by staying away from these proceedings has not helped the matter. In the absence of any nexus between the suit property and the applicants, I find it difficult to grant the orders sought herein.

I dismiss the application and make no orders as to costs.

Dated and delivered at Nakuru this 2nd day of October, 2009.

W. OUKO

JUDGE