



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Miscellaneous Application 20 of 2009

JOHN MBAKA JAMES.....APPLICANT

VERSUS

ABIGAEK KIMA.....1ST RESPONDENT

BIBIAN MUTHONI.....2ND RESPONDENT

R U L I N G

The Applicant herein is seeking for 2 orders:- an order for inhibition and an order for review of this court's ruling made on 6/6/2000 dismissing an application dated 3/11/1999. This application was therefore filed 9 years after the said application was dismissed. The same is premised on the 8 grounds on its face and on the supporting affidavit of the applicant dated 27/1/1999. It is opposed by one Florence Muringo Karuri vide her replying affidavit dated 8/4/2009. Both affidavits have several annexures all of which I have addressed my mind to and carefully considered the contents thereof.

Firstly, I wish to totally agree with the Respondent that there is inordinate delay in the matter which delay has not been explained. This application seeks to set aside or review a ruling delivered 9 years ago. A lot must have happened to the land in question since then and setting the ruling aside would be very disruptive to the parties herein:-

That notwithstanding the court rules that not even a feeble attempt has been made to explain the said delay. The applicant is certainly guilty of laches and he totally fails to invoke the doctrines of equity to assist him in this case. On that ground alone, this application should be dismissed.

I have nonetheless considered it on its merits. I find it totally devoid of merit. I say so because the applicant's mother Beatrice Cianyaga was in court on 26/11/97 when the land was sub-divided and she consented to the sub-division. Indeed, the record shows that she was the one who told the court that they had agreed on the mode of distribution. The applicant cannot now come and complain against that mode of distribution. It matters not that the confirmation was not compliant with the paragraph 5 of Form P& A 9. What carries the day is what the parties agree in court at the time of the confirmation. The applicant has no justiciable claim in this matter whatsoever. If he was rendered destitute by the distribution, he can only blame his mother who gave up her inheritance. He cannot reclaim it by way of revocation of that grant. The Commissioner of Assise who made that ruling made an unequivocal finding that:-

“In a nutshell, the applicant has not made out a

case which warrants the annulment of the grant under Section 76 of the Act. None of the matters mentioned under Section 76 which entitle an applicant to obtain annulment or revocation of Grant have been proved. The application has no merit and is misconceived....”

That remains the position to date. The applicant would still have no grounds to have the grant revoked even if that ruling was to be set aside. I find the application lacking in merit and I dismiss it with costs to the Respondents.

W. KARANJA

JUDGE

Delivered signed and dated at Embu this 2nd day of Nov.2009.

In presence of:- Mr Okwaro for applicant present

N/A for Respondent