

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 1483 OF 2016

ANTHONY GICHANGA WAWERU.....PLAINTIFF

=VERSUS=

THE ATTORNEY GENERAL.....DEFENDANT

J U D G M E N T

1. On 28/11/2016 the Applicant, Antony Gichanga Waweru, took out an Originating Summons dated 24/10/2016. Through the Summons, the Applicant seeks an order vesting in him Land Title Number Dagoretti/Kinoo/878. The Respondent to the Originating Summons is the Attorney General of the Republic of Kenya. The Originating Summons was taken out under Sections 45 and 47 of the Trustees Act, Chapter 167 of the Laws of Kenya and, Order 37 Rule 14 of the Civil Procedure Rules, 2010.

2. The Originating Summons is supported by the Applicant's Affidavit sworn on 24/10/2016. He deposes in the Affidavit that between 1993 and 2014, he lived and worked in the United States of America. While living in the United States of America, through his Grandmother, he purchased the suit property. Because he was not able to travel to Kenya to process transfer of the suit property into his name, he requested his Grandmother, Edith Nduta Gichanga (hereinafter referred to as "**the deceased**"), to cause it to be transferred into her name as his trustee, and this request was effected. On 20/8/2015, his Grandmother, Edith Nduta Gichanga passed on. The death of Edith Nduta Gichanga was subsequently noted on the Land Register at Kiambu County Land Registry. It is against the above background that the Applicant seeks a vesting order.

3. Attached to the Affidavit in support of the Originating Summons are copies of the following documents: the Applicant's ID Card, Passport, Title Deed, Official Search and Death Certificate of Edith Nduta Gichanga. The Originating Summons was canvassed through affidavit evidence and oral submissions by counsel for the Applicant. The Respondent, though served, did not oppose the Originating Summons. Neither did the Respondent attend court to make any presentation. At the hearing of the Originating Summons on 14/6/2017, Counsel for the Applicant submitted that the interest of the Applicant was noted in the Land Register and in the Title. He further submitted that the suit property does not form part of the Estate of the late Edith Nduta Gichanga because she was merely registered as a trustee of the Applicant. He further submitted that under Section 45 of the Trustees Act, this court has powers to issue a vesting order as sought by the Applicant.

4. I have carefully considered the Originating Summons, the depositions in the Supporting Affidavit, the attachments to the Supporting Affidavit and the Submissions by Counsel. The official search is an abstract of the Land Register. Both the official search and the title deed confirm that Edith Nduta Gichanga was registered as a trustee of Antony Gichanga Waweru. The Death Certificate confirms that Edith Nduta Gichanga died in August 2015 aged 93 years.

5. In the pre-2010 constitutional framework, the court contemplated under Section 45 of the Trustees Act was the high court. The Constitution of Kenya 2010 redesigned and reconstructed the Judiciary of Kenya. Jurisdiction over litigations relating to the environment and the use and occupation of and title to land is now vested in the environment and land court. Under Article 165(5) of the Constitution of Kenya 2010, the high court is divested of jurisdiction in respect of matters reserved for the environment and land court. Under Section 33 of the Sixth Schedule to the Constitution of Kenya 2010, this court is the legal successor institution to the pre 2010 high court of Kenya in all matters relating to title to land. On account of the foregoing constitutional and legal framework, I am satisfied that this court has jurisdiction to grant

the vesting order sought by the Applicant.

6. In the absence of any controverting evidence, I do accept the affidavit evidence presented by the Applicant. I am in agreement with counsel for the Applicant that in view of the fact that the deceased is registered as a trustee of the applicant, the suit property does not form part of the estate of the deceased. Consequently, I hereby grant a vesting order in terms of Prayer 1 of the Originating Summons herein. All vesting instruments shall be executed by the Deputy Registrar of Milimani Environment and Land Court of Kenya. There shall be no order as to costs. Upon issuance of the formal decree, this File shall be marked as closed and removed from the list of pending cases.

Dated, signed and delivered at Nairobi on this 11th day of July 2017.

B M EBOSO

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court clerk