



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 346 OF 1986**

**IN THE MATTER OF THE ESTATE OF DANIEL WAINAINA GACHOKA**

**ALIAS DANIEL MARIBA GACHOKA (DECEASED)**

JOHN MBIRI GACHOKA.....1<sup>ST</sup> APPLICANT

LUKAS KAIRU WAIRIMU.....2<sup>ND</sup> APPLICANT

VERSUS

STEPHEN KAGUKU MARIBA.....RESPONDENT

**R U L I N G**

1. The application subject of this ruling is dated 28<sup>th</sup> June, 2019 and brought pursuant to **Section 76** of the **Law of Succession Act** and **Rule 44(1)** of the **Probate and Administration Rules**.

2. The same seeks to have the grant issued to Stephen Kaguku Mariba revoked or amended to remove parcel known as **L.R. No. Kiganjo/Kiganjo/110** from the assets of the deceased or in the alternative the grant be rectified so that only ½ of the said property is reflected as belonging to the estate of herein in line with a ruling in High Court Succession Cause No. 1554 of 1989 and Court of Appeal Case Number 188 of 2002.

3. The application is based on grounds that despite knowledge of the decision in the two cases named above the Respondent proceeded to include the entire portion of land and subdivided the same to his family and in essence disinheriting the off springs of Margaret Magiri (deceased).

4. The application was objected to by the Respondent Stephen Kaguku Mariba by way of an affidavit dated 8<sup>th</sup> July, 2019, a supplementary affidavit of 7<sup>th</sup> July, 2019 & a preliminary objection which objection was dismissed.

5. The Respondent in his affidavits questions the capacity of the two applicants, secondly he raised issue since the decree of the High court and Court of Appeal remain unfulfilled for 13 and 19 years respectively.

Further, he contended that the family of Margaret Magiri (deceased) resides on L.R. No. Kiganjo/Kiganjo/198 and are not beneficiaries of this estate.

6. I have considered the matter and do concur with the respondent on the applicants capacity to bring this application as they are neither the representatives of the estate of Margaret Magiri (deceased) nor the estate of Kibe Mariba (deceased) though I note that the applicants may have a genuine claim nonetheless.

7. Consequently, I will decline the application for now. The applicants be at liberty to re-apply as the application is not yet determined on merit once they obtain legal capacity.

8. Costs in the cause.

**Dated and Delivered in Nairobi on this 26<sup>TH</sup> day of FEBRUARY, 2020.**

**ALI-ARONI**

**JUDGE**