



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CAUSE NO. 93 OF 2017

IN THE MATTER OF THE ESTATE OF WANJIKU THUKU NG'ANG'A (DECEASED)

NANCY WANJA THUKU.....APPLICANT

VERSUS

MONICA WANJIRU CHEGE.....1ST RESPONDENT

GODFREY KURIA NDINGURI.....2ND RESPONDENT

CHARLES MWANGI MACHARIA.....3RD RESPONDENT

DANIEL MAHENJA THUKU.....4TH RESPONDENT

PAUL GITAU MACHARIA.....5TH RESPONDENT

JANE NJERI KABATHI6TH RESPONDENT

RULING

1. For determination is the Summons dated 18th March, 2014 and a Notice of Motion filed on 14th December, 2017. In the first application, NANCY WANJA THUKU, the Applicant seeks that the Court be pleased to issue an order to restrain MONICAH WANJIRU CHEGE from selling, transferring, alienating, charging, leasing and /or dealing in any manner howsoever with the following parcels of land pending the hearing and determination of this application and this Succession Cause :

- i) Ruiru Kiu Block2/9615**
- ii) Ruiru Kiu Block2/9616**
- iii) Ruiru Kiu Block2/6352**
- iv) Ruiru Kiu Block2/6355**

2. She also similarly prays for an order be issued to restrain GODFREY KURIA NDINGURI from selling, transferring, alienating, charging, leasing and /or dealing in any manner howsoever with the following parcels of land:

- i) Ruiru Kiu Block2/6351**
- ii) Ruiru Kiu Block2/6353**
- iii) Ruiru Kiu Block2/6356**
- iv) Ruiru Kiu Block2/6358**

pending the hearing and determination of this application and the Succession Cause herein. And further, an order restraining CHARLES MWANGI MACHARIA, MONICAH WANJIRU CHEGE and PAUL GITAU MACHARIA from selling, transferring, alienating, charging, leasing and/or dealing in any manner whatsoever with the land parcel No. **Ruiru Kiu Block2/6358**

3. The Applicant also prays that the Court be pleased to make and issue an order restraining JANE NJERI KABATHI from selling, transferring, alienating, charging, leasing and /or dealing in any manner howsoever with the following parcels of land:

i) Ruiru Kiu Block2/6354

ii) Ruiru Kiu Block2/6357

4. Additionally, she prays that the Court be pleased to cancel and/or revoke the transfer of land known as RUIRU KIU BLOCK 2/4161 to DANIEL MUHENJA THUKU and the subsequent sub-divisions and titles below and that all transfers and/or dealing involving the above parcels and sub-segments to the said sub-divisions be cancelled and/or revoked:

a) Ruiru Kiu Block2/6351

b) Ruiru Kiu Block2/6352 and its further Sub-division known as Ruiru Kiu Block 2/9615 and Ruiru Kiu Block 2/9616.

c) Ruiru Kiu Block2/6353

d) Ruiru Kiu Block2/6354

e) Ruiru Kiu Block2/6355

f) Ruiru Kiu Block2/6356

g) Ruiru Kiu Block2/6357

h) Ruiru Kiu Block2/6358

5. A further prayer is that, the administrators of the estate be registered as proprietors of the land known as Ruiru Kiu Block 2/4161 as trustees of the beneficiaries of the estate of the late Wanjiku Thuku Ng'ang'a.

6. The Application is based on the grounds that the deceased herein was the registered owner of a parcel of land known as Ruiru Kiu Block 2/4161 which parcel of land, Monicah Wanjiru Chege, Godfrey Kuria Ndinguri, Charles Mwangi Macharia and Paul Gitau Macharia have fraudulently subdivided and acquired.

7. **NANCY WANJA THUKU** in her supporting affidavit deposed that together with her sister **Jane Njeri Kabathi** had petitioned for Letters of Administration intestate in respect of the deceased's estate consisting of RUIRU KIU Block 2/4161 which Monicah Wanjiru Chege and Godfrey Kuria Ndinguri had illegally subdivided to eight portions being Ruiru Kiu Block 2/6351, 6352, 6353, 6354, 6355, 6356, 6357 and 6358 and fraudulently acquired registration to themselves. She claimed that her brother **Daniel Muhinja Thuku** in whose name the said transactions were carried out, is blind and had not applied for a grant in respect of the estate of his and the Applicant's deceased mother, Wanjiku Thuku Ng'ang'a. She deposed that their sister **Jane Njeri Kabathi** though assigned two of the subdivisions had denied being involved in the impugned transactions.

8. Subsequently, **MONICAH WANJIRU CHEGE** filed her replying affidavit on 7th June, 2017. Therein, she deposed that together with Godfrey Kuria Ndinguri they entered into a sale agreement with **Daniel Muhinja Thuku** and **Jane Njeri Kabathi**, the deceased's children; that upon the deceased's title being transferred to **Daniel Muhinja** he transferred the purchased subdivisions to them and they were issued with the title deeds to their respective portions, being Ruiru/ Kiu Block 2/6351, 6352, 6353, 6355, 6356 and 6358 while Jane Njeri Kabathi was issued with a title for Ruiru/ Kiu Block 2/ 6357. She stated that notwithstanding disagreements among the children of the deceased, she and Godfrey Kuria Nding'uri were innocent purchasers for value and that Jane Njeri Kabathi was involved throughout the transaction; and that Daniel Muhinja only partially blind.

9. In the second application, **NANCY WANJA THUKU**, the Applicant sought a temporary order of injunction restraining the 1st to 5th Respondents either by themselves, their agents, servants, and/or employees or any other beneficiaries from selling, transferring or in any other manner interfering with the deceased's estate pending hearing and determination of this application and the issuance of the confirmation of grant, and that an order be issued declaring all transactions and transfers relating to RUIRU KIU BLOCK 2 (GITHUNGURI) 4161 as null and void and the said property be reverted back to the original owner.

10. The Application is based on the grounds that the 1st to 5th Respondents fraudulently transferred and subdivided land parcel number RUIRU /KIU BLOCK 2 (GITHUNGURI) /4161. The application is supported by the affidavit of **NANCY WANJA THUKU**, the Applicant herein. She deposed that the suit property belongs to the deceased's estate and that Daniel Muhinja Thuku the 4th Respondent illegally transferred the same to himself and thereafter sold and subdivided to the 1st, 2nd and 3rd Respondents. She contended that the Respondents fraudulently and illegally transferred and subdivided the suit property to portions namely Ruiru Kiu Block 2/6351, 6352, 6353, 6354, 6355, 6356, 6357 and 6358.

11. **DANIEL MAHENJA THUKU** filed his replying affidavit on 20th July, 2018 as the 4th Respondent herein. He deposed that after his mother's death, he had desired to subdivide the suit land but unfortunately he did not know how to go about it and even lacked the resources; that he was introduced to Monica Wanjiku Chege who offered to assist him and that he gave her the certificates in his possession. He claimed that Monicah Wanjiru Chege used the said certificates to collect process title deed through initial transfer of the allotment/shares held by his deceased mother in **Githunguri Constituency Ranching Company Limited** and thereafter transferred the land to him without his

knowledge or consent. He denied signing any documents to facilitate the sub-division as he is blind. He confirmed that the process of succession had not been conducted at the time. He also denied receiving any money and attending any Land Control Board for consent and prayed that the court does cancel all the titles in dispute.

12. **GODFREY KURIA NDIINGURI** in his replying affidavit filed on 12th July, 2018, denied committing fraud or intermeddling with the deceased's estate. He contended that the 1st Respondent (Monica) introduced him to the 4th Respondent who gave him instructions to subdivide the suit property and availed the title deed. That together with his sister Jane Kabathi, the 4th Respondent expressed their desire to sell eight portions of the said subdivided land to the 1st and 2nd Respondents; that they purchased their respective while following the due process which did not require a grant as **Githunguri Constituency Ranching Company Limited** did not require a certificate of confirmed grant to effect transfer of shares to the 4th Respondent. Thus, he avers that the transfer of shares of the deceased to the 4th Respondent is proper and legal.

13. The Applicant filed her response to the 2nd Respondent's replying affidavit. She contended that the 4th Respondent was misled by the 1st and 2nd Respondents as he is blind and illiterate and that there was no proof of payment of the alleged purchase price to the 4th Respondent as claimed by the 2nd Respondent. She contended that Githunguri Ranching Company Limited do require a confirmed Grant of letters of administration to effect transfer of shares of a deceased person and that a search conducted on 1st March, 2010, indicated that the suit property was still registered under the deceased's name while the disputed title was issued on 3rd December, 2009, a clear evidence of the fraud.

14. The two applications were consolidated and heard together by way of oral arguments. Mr. Machua for the Applicant submitted that fraudulent transfers had been effected in respect of the deceased's estate. He contended that the Respondents were aware that the vendor was not the bearer of a grant to the deceased's estate and that they manipulated the 4th Respondent to transfer the land to them. It was submitted that the 4th Respondent denies selling the land and that the transaction is null and void and besides, the said Respondent had no capacity to sell estate property of the deceased there being was no confirmed grant issued in his favour. The court was urged to nullify the transactions and transfers.

15. Miss Muritu for the 1st and 2ND Respondents submitted that the 1st and 2ND Respondents entered into a sale agreement with the 4th Respondent and Jane Njeri Kamathi. She contended that the 4th Respondent had a title in his name having already transferred deceased's shares at Githunguri Constituency Ranching Co. to himself. It was submitted that besides being blind he is of sound mind. That the 1st and 2nd Respondents were not party to the fraud alleged against them as they believed the vendors possessed good title. The court was urged to find that the titles were obtained legally.

16. It is necessary to observe here that the 3rd to 5th Respondents to the 2nd application, though present on 24/7/2018 and despite being granted leave to file their replies, neither so filed nor attended court again. Similarly, Jane Njeri Kabathi who was a respondent in the first application did not participate in the proceedings at all.

17. The court has considered the serial affidavits filed, and submissions made by the respective parties in respect of the summons dated 18th March 2014 and the summons filed on 14th December 2017. The applications (hereinafter the 1st and 2nd applications respectively) are by **Nancy Wanja Thuku**, the Applicant, and are similar in many respects.

18. The record indicates that **Wanjiku Thuku Ng'ang'a**, the deceased herein died on 29th March 2001 and was survived by three adult children, namely Jane Njeri Kabathi, Nancy Wanja (Applicant) and Daniel Muhinja Thuku (Muhinja). Two sons, namely John Gitari and Ng'ang'a Thuku predeceased her but the former was survived by his wife Teresiah Mote and four children. The Petition for grant of letters of administration was filed on 12th June 2012 with the consent of Muhinja, by Jane Njeri Kabathi (Njeri), the Applicant and Teresiah Mote. An application filed contemporaneously dated 6th June 2012 was declined by **Musyoka J** on the grounds of lack of *locus standi* by the Applicants, and subsequent to which the Applicant moved the court *via* a summons filed on 14th November 2013 seeking a grant of administration *ad colligenda bona defuncti*. On 14th November 2013 Musyoka J issued a limited grant of letters of administration *ad colligenda bona* in favour of the Applicant. Thereafter the two applications which are the subject of this ruling were filed.

19. The undisputed facts giving rise to the motion were that on her death, the deceased owned shares in Githunguri Constituency Ranching Company Ltd. entitling her to a land parcel No. RUIRU BLOCK 2 (GITHUNGURI)/4161 measuring 0.5330 ha (hereinafter the suit property). An official search certificate dated 1st March 2010 indicated that the land parcel was registered in the name of the deceased and a title deed issued. However, it appears that on 4th December 2009 Muhinja procured the transfer of the suit property to himself, a title deed issuing in his name on 22nd December 2009. Subsequently, the suit property was divided into eight portions, namely RUIRU KIU BLOCK 2/6351 to 6358 (hereinafter the subdivisions).

20. By a sale agreement dated 3rd December 2009, and purportedly entered into between Muhinja and his sister Njeri as vendors on one hand, and Monica Wanjiru Chege and Godfrey Kuria Ndinguri (1st and 2nd Respondents in the second application) on the other hand as purchasers, four of the subdivisions measuring 0.1ha each were sold to the purchasers. Two of the subdivisions, namely No. 6351 and 6352 measured 0.1 ha each while the smaller remaining subdivisions No. RUIRU KIU BLOCK 2/6351, 6353, 6356 were registered in the name Godfrey Kuria Ndinguri (Kuria). The parcels No. 6352 (later subdivided into parcels No. 9615 and 9616), and 635 were registered in the name of Monica Wanjiru Chege (Wanjiru).

21. It appears from the material on record and admissions by Kuria that subdivision No. 6358 was initially jointly owned by Wanjiru and himself (Kuria). A copy of the title deed in respect of the subdivision, filed with the Petition for grant and issued on 5th May 2010 reflects the proprietors to be Charles Mwangi Macharia (the 3rd Respondent in the 2nd application). However, a copy of search certificate dated 7th October 2011 also filed with the Petition and also annexed to the Applicant's affidavit filed on 25th July, 2017 and whose date is 9th October 2011 reflects two proprietors, namely Wanjiru and Paul Gitau Macharia (the 5th Respondent in second application). The two remaining subdivisions, that is 6354 and 6357 were registered in the name of Jane Njeri Kabathi and title deeds issued on 5th October 2011. The titles were later to be deposited with Chief Josep Ntonga by Wanjiru for onward transmission to Njeri who despite being notified declined to

collect them, prompting the Chief to return them to Wanjiru on 19th November 2011 *vide* his letter of even date. Needless to say, up until that date no succession proceedings had been commenced in respect of the estate of the deceased herein.

22. Having considered the prayers in the first summons, it is evident to the court that prayers 2, 3, 4 and 5 are in many respects in alternative to prayer 6 and 7 the latter which seek the cancellation and revocation of the transfer to Muhinja of the suit property, and subsequent subdivisions and transfers to different persons. Prayer 8 cannot issue at this stage seeking as it does an order that the original suit property be registered in the name of the administrators, who are yet to be appointed. Indeed, it is not clear from the record whether the cause has been published in the Kenya gazette as required under Rule 7(4) of the Probate and Administration Rules. Concerning the second application, prayer 2 echoes prayers 2 to 5 of the first application while prayer 3 is equally subsumed in prayers 6 and 7 of the first application.

23. Before dealing with the substantive matter, it is pertinent to consider an objection to this court's jurisdiction raised in the submissions of the 1st and 2nd Respondent. To the effect that any question of fraud in the acquisition of titles as alleged by the Applicant ought to be agitated before the Environment and Land Court. To which the Applicant's counsel responded that the matter before the court is a succession matter and that the suit property belonged to the deceased. The latter fact is not in dispute.

24. The deceased died in 2001. The devolution of her estate would fall within the ambit of the Law of Succession Act. Section 2(1) of the Law of Succession Act provides that:

“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of Deceased persons dying after, the commencement of this Act and to the administration of the estates of those persons.”

25. The subject matter of this cause is the admitted free property of the deceased herein at the time of death, which upon her death was transferred to Muhinja without recourse to the probate court under the Law of Succession Act. That much is admitted by the parties. The High Court has the necessary jurisdiction under Section 47 of the Law of Succession Act to entertain any dispute under the Law of Succession Act and to pronounce such decrees and make such orders as may be expedient. The key issue raised by the Applicant's two applications is whether the transfer of the deceased's property upon her death, to Muhinja and other Respondents was proper, or sanctioned by the Law of Succession Act. Without a doubt, that is a matter falling squarely within the jurisdiction of the High Court.

26. Concerning the substantive question, namely, the lawfulness or otherwise of the transfer of the Deceased's property to the Respondent's the Law of Succession Act provides at Section 45 that:

“1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a Deceased person.

2) Any person who contravenes the provisions of this section shall –

a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment, and

b) be answerable to the rightful executor or administrator, to the extent of the assets with which he had intermeddled after deducting any payments made in the due cause of administration.”

27. There is uncontroverted evidence *vide* the search certificate in respect of the suit property, dated 1st March 2010 [annexure “NWT2”] to the Applicant's affidavit in support of the second application, that the suit property was registered in the name of the deceased by that date. Strangely however, annexure NWT 3 to the said affidavit, is a title deed in the name of Muhinja issued on 22nd Day of December 2009 in respect of the same property. Muhinja, the 1st and 2nd Respondents admit that no succession process was undertaken to enable the devolution of the asset from the deceased to Muhinja. Muhinja asserts that by way of explanation that he sought help from the Wanjiru to assist in subdivision of his mother's land and handed the “certificates and my mother's ID card” to Wanjiru for the purpose culminating in the title issued in his name.

28. For her part, Wanjiru filed an un-commissioned affidavit on 7th June 2017 explaining that Muhinja and his sister Njeri entered into a sale agreement with Godfrey Kuria Ndinguri and herself on 3rd December 2009 to purchase 4 plots out of the suit property; that the purchasers were aware that the property belonged to the deceased mother of the alleged vendors who “presented copies of share certificates in the deceased of the land buying company Githunguri constituency Ranching company,”; that Muhinja transferred the share certificate to himself and obtained the documents required for issuance of a title deed on 22nd December 2009; that subdivision was later carried out and transfers effected in favour of the “respective owners”.

29. Attached to Wanjiru's purported affidavit is the purported sale agreement “MWC 1” which states in part that the deceased was the owner of “*the parcel of land contained in share certificate No. 2037 in Githunguri Constituency Ranching Company... measuring ¼ acre*” and that the vendors were “*the only beneficiaries of the Estate of the Deceased.*” The share certificate and clearance form from Githunguri Constituency Ranching Co. are annexed as annexures MWC 2 – 3 to Wanjiru's so-called affidavit. Also annexed as annexure MWC 3 (erroneously so marked) is a share certificate in Githunguri Constituency Ranching Co. in the name of Muhinja, purportedly issued on 4th December 2009.

30. The replying affidavit filed by Kuria on 12th July 2018 is in similar vein. Standing out in the two affidavits is the fact that the so-called purchasers knew that the purported vendors had no grant in their favour. The sale agreement annexed to their respective affidavit indicates at clause 2 that:

“That the purchasers shall be included in the letters of administration Certificate of Confirmation in Thika Court) as beneficiaries for value” (sic).

Also standing out is the fact that none of the supposed purchasers conducted any search on the suit property prior to the agreement. The affidavit by Kuria goes further to state that:

“I inquired from the directors of Githunguri Constituency Ranching Co. Ltd whether they require certificate of confirmed grant in order to effect transfer of the shares of the Deceased and they informed me that they do not require it so long the transferee proves that he is a beneficiary of the estate of the deceased.” (sic)

31. The deceased’s shares in Githunguri Constituency Ranching Co. Ltd. were her property as was the land parcel to which she was entitled through the shares. Muhinja had no authority to deal with the said property whether by transferring the shares and corresponding land parcel to himself, subdividing the land, sale or other disposition without the authority of the court, and it did not matter what the Ranching Company allowed or advised upon the death of the shareholder. The shares and land held thereby could only devolve on the personal representative of the deceased shareholder.

32. While it is not disputed that Muhinja is blind from birth and there is no real evidence that he received the monies he acknowledged in the sale agreement, (indeed the so-called authority executed by Muhinja to Wanjiru and Kuria to authorize them to subdivide the land and which is annexed to Kuria’s Replying affidavit, and dated the same day as the sale agreement indicates that the purported purchasers were to pay the purchase price in kind through the subdivision services they were to render to Muhinja), it is difficult to believe Muhinja’s assertions that he had no role whatsoever in the purported transmission of the deceased’s estate into his name. By his own words he started out with the desire to subdivide the land hence sought Wanjiru’s help. Annexed to the so-called affidavit of Wanjiru is an affidavit sworn by Muhinja and his reticent sister Njeri on 22nd June 2010, protesting the alleged intervention of an uncle John Gitari Muhinja by evincing intent to place a caution against the suit property that they were intending to sell. The affidavit states in part that:

“We have already subdivided the land and sold some part to other parties copy of agreement attached ... it will be unfair for him (uncle) to interfere with our own affairs and has no right to claim any interest on the subject land.” (sic)

33. It appears that the 1st, 2nd, 3rd, 4th, 5th Respondents to the 2nd application, jointly with Njeri all played different roles in transferring the deceased’s property irregularly to themselves without applying for a grant as required. Section 55 of the Law of Succession Act forbids the distribution or the division of capital assets such as land until a grant has been issued and confirmed. The actions of the said persons constitute an illegality in terms of Section 45 of the Law of Succession which proscribes intermeddling.

34. On this point, this court associates itself unreservedly with the words of **Gikonyo J** when faced with a similar situation **In re Estate of M’Ngarithi M’Miriti [2017] e KLR:**

...[5] Before I delve into the distribution of the estate, I should first settle the issue of intermeddling. Courts have said time and again that any person who without the authority of the Law of Succession Act or any other written law or grant of representation, takes possession or disposes of, or otherwise intermeddle with the free property of the deceased is guilty of a criminal offence and is answerable to the rightful executor or administrator of the extent of the assets he has intermeddled with. The 1st and 2nd administrator have alleged that the 3rd administrator without the authority of the law or grant of administration or court sold part of the estate property to a third party one David Gikunda. The 3rd administrator did not respond to those allegations. That notwithstanding, this grant is yet to be confirmed and as such the restriction on distribution of estate’s capital or immovable properties under section 55 and 82(b) (ii) of the Law of Succession Act applies. Accordingly, there is nobody yet with authority to sell the estate property herein to any person including David Gikunda. Accordingly, the sale to or acquisition of the immovable property of the estate by David Gikunda is completely in violation of the law, and therefore null and void. Whatever, the 3rd administrator may have attempted to sell is part of the estate to which this proceeding relate, and I shall proceed as such. If he is occupation, he shall be evicted forthwith. See **GLADYS NKIROTEM’ITUNGA vs. JULIUS MAJAU M’ITUNGA [2016] eKLR that**

“Whereas the law of succession does not define what intermeddling with the property of the deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of **BENSON MUTUMAMURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER [2016] e KLR the court observed that:**

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

See also the case of **MACHAKOS HIGH COURT CIVIL CASE NO. 95 OF 2001 JOHN KASYOKIKIETI – vs- TABITHA NZIVULU KIETI & ANOTHER** it was held that doing anything affecting the estate of a deceased person amounts to intermeddling. In the case cited, the court considered commencing a suit on behalf of the estate before obtaining a grant of

representation to be an act of intermeddling with the estate. Again, consider the case of GITAU AND TWO OTHERS -vs- WANDAI AND FIVE OTHERS (1989) KLR 231 where it was held that entering into an agreement to sell estate property before getting a grant or without such a grant is an act of intermeddling.”

35. I may add here that neither Njeri nor Muhinja had a good title to pass to the so-called purchasers at the time of the alleged sale agreement, themselves having no authority under the law in respect of the suit property. It goes without saying that the purported subdivision, sale and transfer of the deceased's property to Muhinja and thence his co-respondents is null and void and resultant titles liable for cancellation. In the circumstances, the only orders to grant are prayer 7 of the 1st motion and prayer 3 of the second motion and the latter order will also include a direction to the land registrar for the re-consolidation of the suit property, namely **RUIRU KIU BLOCK 2 (GITHUNGURI) 4161** in order to facilitate reinstatement of the deceased's name as the proprietor thereof.

36. For the avoidance of doubt, prayer 2 of the second motion which was granted by **Ngugi J.** on 1/2/2018 was to subsist until the suit was heard and determined but the court hereby further modifies it by including a direction to the land registrar to place a restriction on any dealings in the reconsolidated land parcel **RUIRU KIU BLOCK 2 (GITHUNGURI)/4161** pending the hearing and determination of this cause.

37. As earlier indicated, it appears that the cause had not been published in the Kenya Gazette as required by the provisions of Rule 7(4) of the Probate and Administration Rules. The court directs that in order to expedite the matter, that the Petitioners proceed to make the necessary arrangements for compliance with the said Rule so that a grant can be issued to them. In view of the age of this dispute, the court directs that upon such grant being issued, the parties will be at liberty to apply for confirmation before the expiry of 6 months.

38. On costs, the court grants all costs occasioned by the two applications to the Applicant.

SIGNED ON THIS 12TH DAY OF JUNE 2020 AND DELIVERED VIA eMAIL TO THE PARTIES ON 12TH DAY OF JUNE 2020

C. MEOLI

JUDGE