



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NUMBER 3 OF 2015**

**IN THE MATTER OF THE ESTATE OF CHARLES MAINA NDEGWA (DECEASED)**

**PRISCILLA WANJIRU GITHINJI**

**PATRICK KABENGI KIURA .....PETITIONERS  
/APPLICANTS**

**RULING**

The Summons General dated 20<sup>th</sup> June 2016 is brought under Rule 73 of the Probate and Administration Rules. It is supported by the joint affidavit of the applicants. It seeks the order that this honorable court be pleased to order the County Land Registrar Nyeri to dispense with the production of the original title deed for the land reference number NYERI/GATARAKWA/1066 during registration of the transmission documents.

According to the affidavit of the two deponents are administrators of the Estate of Charles Maina Ndegwa (Deceased). Grant of letters of administration intestate was made on the 19<sup>th</sup> April 2015 and confirmed on the 2<sup>nd</sup> of February 2016.

The deceased had only one asset LR. NYERI/GATARAKWA/1066 according to the official search dated 13<sup>th</sup> June 2016.

The original title deed cannot be traced for purposes of the transmission documents.

Mr. Kebuka Wachira for the respondents submitted on behalf of the applicants.

The grant of letters of administration intestate was confirmed on the 2<sup>nd</sup> of February 2016.

I have perused the record. I have noted that the letter from the chief Gatarakwa Location dated 17<sup>th</sup> November 2014 described the property as belonging to the deceased.

However, the record also revealed something of concern to this court. That the three of the beneficiaries of the estate were minors at the time the petition was filed, and at the confirmation of the grant. However, when the grant was confirmed there was no indication as to whether the administrators would hold the estate in trust for the minors.

By virtue of rule 73 of the P&A rules which provides for the unlimited inherent powers of the court make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court, I find that omission places the minors at the risk of being disinherited at the time they will have attained age of majority.

I am empowered by the law to make orders to ensure that the ends of justice are met. I am also enjoined by Article 53 of the Constitution to take into consideration the best interests on the child. My view is that before the issue of transmission is dealt with, the issue of interests of the child be secured.

Hence, I will suspend the issue of the untraceable title deed and give the administrators the time to regularize the issue and comply with the law.

**Dated, Signed and delivered this 25<sup>th</sup> May 2017 at Nyeri**

**Teresia Matheka**

**Judge**