



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION MILIMANI LAW COURTS**  
**SUCCESSION CAUSE 1715 of 2013**  
**(Formerly SUCCESSION CAUSE NO 14 OF 2000 KIAMBU SPM COURT)**

**IN THE MATTER OF THE ESTATE OF GERISHON MACHANGI KAIO ALIAS GERISHON  
KIRANGI**

**JOEL KARIUKI KIRANGI.....APPLICANT**

**Versus**

**MICHAEL KANGETHE NGUGI.....RESPONDENT**

**J U D G M E N T**

1. The Court has before it an Application to revoke the Letters of Administration granted to the Respondent and also to set aside the transfer of land that took place as a consequence. The land parcel of land in question is known as LIMURU/NGECHA/546
2. The Application is brought by the First Applicant named, but if there was a formal application on the Court File, it is no longer there. The Applicant appears to have asked for reconsideration and review of the orders of the Lower Court by the High Court.
3. The Letters of Administration were issued to a Michael Kangethe Ngugi (the Respondent) in Kiambu on 20th March 2000 following Gazette Notice No 922 of 18th February 2000. In his Petition the Respondent presented his Petition in his capacity as "grandchild of the Deceased". It is now said that he was not related to the Deceased at all. The Deceased passed away on 11th January 1994. The Deceased had 10 Children including the Applicant. The only two surviving children now are the Applicant and Mrs Susan Kabura Kirangi who also lives in Limuru. According to the Petition and the Supporting Affidavit the Deceased was survived only by Francis Ndungu Kinuthia (son) and Michael Kangethe Ngugi. However according to the Applicant, the Deceased's Widow was known as Agnes Wairimu Kirangi. but Florence Njeri Kinuthia (now deceased was also a daughter in law). At the time there was no challenge following the Gazette Notice and as a consequence, the grant was confirmed and the land was transferred to the Respondent. The Letters of Administration were granted to the Respondent on 20th March 2000. On 31st March 2000, he filed an Application for Confirmation of the Grant although 6 months had not lapsed. In fact not even one month had lapsed. The reason for the urgency is not set out in the Affidavit filed with the Summons for Confirmation. A further application was made in October 2000 and the Grant was confirmed on 2nd October 2000. It is unclear why the Widow would conspire with another but from the evidence before the Court it is clear that there were other beneficiaries and dependants who were excluded by the Grant and Certificate of Confirmation as well as from the the consequent distribution.

5. Shortly after the Certificate of Confirmed Grant was issued, a Joseph Gerishon Gakio Ngenga wrote to the Court to say that he was in fact the grandson of the late Mzee Gerishon Machangi Kagio and would like to be issued with a certified copy of court proceedings on the subject. This Application was brought some time later and he has filed two Statements within the proceedings. The first was dated 16th April 2015. In it he explains that he is the grandson of the deceased Mzee Gerishon Kirangi through his first born, Silvanus Njenga Kirangi who is himself deceased. He further states that he was present on 10th November 1985 when the Deceased's Will was written during a family meeting. Those also present were Jonah Kinuthia Kirangi (2nd Child), Samuel Robert Ndungu Kirangi (3rd Child) Albert Karanga Kirangi (4th Child) and Joel Kariuki Kirangi (youngest child). At the Meeting the Deceased listed the 6 parcels of land he had and bequeathed them to his five sons. The Will was written by Joseph Njenga, which also documented what had already been done. In 1992 Agnes Wairimu Kirangi (the Widow) passed away. The Deceased then repeated that his sons would be the beneficiaries of his Estate. At the Second Meeting, the Will was made public to other family members including daughters and daughters in law and some grandchildren. The son of the 2nd Child (Jonah Kinuthia Kirangi), and Eng Dominic Kirangi Kinuthia were present. Jonah himself had passed away and it was agreed that his family would inherit LR No Ngecha/Limuru 546. There were three administrators said to have been appointed; (1) Joseph Gakio Njenga, (2) Joel Kariuki Kirangi and (3) Albert Karanja Kirangi. The Deceased passed away in 1994 and the family had several meetings (6th July 1997 and 3rd June 2000). At the meetings it was discussed and confirmed that Jonah Kinuthia Kirangi had forfeit the parcel of land LR Ngecha/Limuru/546 to his Father. However, by June 2000, Letters of Administration had been applied for by the Respondent.

6. Florence Njeri Kinuthi (Widow of Jonah), it is said, conspired with Michael Kangethe Ngugi for him to obtain grant of letters of administration and then to be registered as the owner of the parcel of land. He was a neighbour so simply crossed over the fence to gain access and install himself onto the land that he has thereafter continued to occupy. In the Petition for Grant of Letters of Administration, Florence Njeri represented herself to be the widow of the Deceased. That was not true. She was his daughter in law. She was also said to have been illiterate yet the affidavit of consent bears what purports to be her signature, not a thumb print.

7. The Applicant also filed a witness statement in which in which he states that the Letters of Administration were obtained by fraud. He says that the Respondent was not related to the Deceased let alone a son or grandson. He says he has known the Applicant since they were children in Kabuku Village, Ngecha Location Limuru but he is the son of Ngugi Michuki and they are not related.

8. The Respondent Michael Kangethe Ngugi has filed a witness statement dated 16th March 2015. Also filed in support of his case is the witness statement of Peter Kimwaki Muhoro. Although the Defendant did not attend the Hearing those statements form part of the record. Both thos statements point to the Respondent purchasing the land in July 1999 rath than inheriting it. They confirm that the Respondent was given the title deeds and death certificate by Florence Njeri. The Witness Statements do not explain why the Defendant described himself as the grandson when he was gaining title through purchase of the land not inheritance. What is the purpose of that misstatement?

9. The Matter was listed for Hearing on 30<sup>th</sup> May 2017. The Applicant and his witness attended. He was represented by his Advocate. The Respondent did not attend. Nor did his Advocate. The Applicant states that the Notice of Hearing was served on the Respondent's Advocates. That is borne out by the Affidavit of Service sworn by Mr Mathew Musotsi. He confirms that he served Messrs Maina & Partners Advocates on 4<sup>th</sup> May 2017. The attached copy of the Hearing Notice has been stamped and signed.

10. The matter has been before the Courts previously. On 19<sup>th</sup> October 2015 Hon. L. Achode J also ordered on inhibition on the parcel known as L.R. No Limuru/Ngecha 546 until further order of this Court . That Order continues.

11. The Court heard oral evidence from the Witnesses that attended. Their evidence is now on the record. They seek orders that the grant to Michael Kangethe be revoked and that the transfer be reversed and that he should vacate the property and remove any developments. However, the Respondent did not attend and the witnesses have not been cross-examined.

12. The Court was led to believe that the Respondent had been properly served by service upon the firm of Maina & Partners. However, in her Order of 18<sup>th</sup> November 2015 Hon L. Achode J ordered that after Mr Maina had filed his application to cease acting, the Respondent must be served in person with the next hearing date. The Chamber Summons for leave to cease acting was served on 10<sup>th</sup> November 2015. It has not been heard and no orders have been made – although it confuses the Respondent with the Plaintiff/Applicant. In any event the Court had ordered service on the Respondent in person. The Applicant has not done that. In the circumstances, this Court cannot make a final order without affording the Respondent the right to be heard.

13. It is therefore Ordered that:

- (1) Matter be treated as part heard;
- (2) The Applicant to take a new date at the Registry for hearing and serve the Respondent personally;
- (3) The inhibition ordered on 19<sup>th</sup> October 2015 to continue until further Order;
- (4) Costs in the Cause.

Order accordingly,

**FARAH S. M. AMIN**

**JUDGE**

**Delivered, signed and dated this 31<sup>st</sup> day of July 2017**

In the Presence of:

Court Clerk: Patrick Mwangi

For Applicant: Nephath Ngugi Mwaniki and Joel Kirangi

For Respondent: M/s Maina & Partners on record. No attendance.