



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 804 OF 2011

(IN THE MATTER OF THE ESTATE OF DAVID WAIGI MARARO (DECEASED))

IRENE WANJIRA MARARO.....APPLICANT

VERSUS

PATRICK KABUNG'O MARARO.....1ST PETITIONER

CATHERINE WAMUYU MARARO.....2ND PETITIONER

MARTHA WAMBUI GITONGA.....3RD PETITIONER

AND

PETER WANGAI MARARO.....RESPONDENT

RULING

The deceased David Mararo Waigi died on 15th August, 2007; he was then domiciled in Kenya and his last known residence was at a place called Gamerock within Nyeri County.

The deceased died intestate and according to the petition filed in this court on 7th October, 2011, for letters of administration of his estate intestate, he left behind several assets including a parcel of land known as **Title No. Iriaini/Kairia/1865** which now comprise his estate.

In the summons filed in court by the applicant on 18th March, 2015 and which is the subject of this ruling, the applicant wants an order declaring the reversion of **Title No. Iriaini/Kairia/1865** to **Title No. Iriaini/Kairia/8** and subsequent subdivisions illegal or unlawful; he also wants the original title being **Title No. Iriaini/Kairia/1865** reinstated pending the conclusion of the succession proceedings.

The applicant has described herself in the affidavit she swore in support of the application as one of the administrators of the deceased's estate. She has also deposed that the parcel of land referred to as **Title No. Iriaini/Kairia/1865** was registered in her name at the time of the deceased's death and therefore it is not part of the deceased's estate available for distribution amongst his survivors or beneficiaries.

According to the applicant, **Title No. Iriaini/Kairia/1865** was initially part of the parcel of the land known as **Title No. Iriaini/Kairia/8**. Sometimes in March, 2015 the applicant discovered that the registration of this latter parcel had been reinstated and subdivided into 25 new parcels ranging from **Title**

No. Iriaini/Kairia/2549 to Title No. Iriaini/Kairia/2573. It is the applicant's case that the reinstatement of **Title No. Iriaini/Kairia/8** and its subsequent sub-division into 25 parcels was fraudulent.

The applicant has also deposed that although in effect **Title No. Iriaini/Kairia/1865** does not exist, it is stated to be among those assets available for distribution in the summons for confirmation of grant pending for hearing and determination.

Apart from **Title No. Iriaini/Kairia/1865**, the applicant has sworn that other properties which have been included in the list of the deceased's estate but which did not belong to the deceased are **Plot Nos. Karatina Township/Block 1/276, Karatina Township/Block 1/433** and **Karatina Township/Block 1/144.**

The 1st petitioner opposed the application and swore a replying affidavit to that effect. He swore that the transfer and registration of **Title No. Iriaini/Kairia/1865** in the applicant's name was fraudulent and in fact the transaction that culminated in the registration and transfer was a subject of criminal proceedings against the applicant in **Nyeri Chief Magistrates Court Criminal Case No. 732 of 2008.** According to this petitioner, the alleged transfer was revoked and the land transferred back to Eva Wanjiku Mararo, Peter Wangai Mararo and James Wachira Mararo.

The petitioner swore that the land initially belonged to his mother and at one point the deceased purported to transfer the land to himself but again this transfer was revoked and transferred into the names of the petitioner's brother.

The applicant's application was made against the background of a summons for confirmation of grant filed by the 1st and 3rd petitioners and an affidavit of protest against the confirmation filed by the applicant. In both the summons and affidavit of protest, **Title No. Iriaini/Kairia/1865** feature prominently. As noted earlier, the same parcel of land was included in the affidavit in support of the petition for letters of administration as one of the assets comprising the deceased's estate.

I have noted from the record that before the applicant's application was filed, directions had been taken to the effect that the protest by the same applicant be heard by way of oral evidence.

In my humble view, it is at the hearing of the protest and the summons for confirmation of grant that the extent of the deceased's estate will be determined; I suppose also, it is at that time that this court will consider conclusively the question whether any of the properties whose ownership is apparently in dispute, including **Title No. Iriaini/Kairia/1865, Title No. Iriaini/Kairia/8** or any of the parcels registered as **Title Nos. Iriaini/Kairia/2549 to Title No. Iriaini/Kairia/2573** are part of the deceased's estate or should be deemed to be part of that estate for purposes of distribution amongst the deceased's heirs.

Before the court makes its determination, it is necessary that all these properties are preserved and protected from disposal or any other form of alienation that is likely to frustrate the court's judgment at the conclusion of this succession cause. In the circumstances, I issue a prohibitory order prohibiting all dealings on **Title No. Iriaini/Kairia/1865, Title No. Iriaini/Kairia/8** or any of the parcels registered as **Title Nos. Iriaini/Kairia/2549 to Title No. Iriaini/Kairia/2573** pending the hearing of the summons for confirmation of grant and the protest against it. The summons dated 18th March, 2015 is allowed in the forgoing terms. Costs shall abide the outcome of the confirmation proceedings.

Meanwhile I direct the deputy registrar to avail the original records in the following cases at the hearing of the protest and the summons of confirmation of grant:-

1. **Nyeri Chief Magistrates Court Criminal Case No. 732 of 2008, Republic versus Irene Rose Wanjira Mararo**
2. **High Court Succession Cause No. 48 of 1989, In the matter of the estate of Eva Wanjiku Mararo (deceased)**

It is so ordered.

Signed, dated and delivered in open court this 15th day of April, 2016

Ngaah Jairus

JUDGE