

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 622 OF 2014

**IN THE MATTER OF THE ESTATE OF NJUGUNA WANYAGA *alias* SAMUEL NJUGUNA,
DECEASED**

DEDAN MURIGU CHEGE.....APPLICANT

VERSUS

LEGINA NYAMBURA NJUGUNA.....ADMINISTRATOR/RESPONDENT

AND

CHARLES MACHARIA MWANGI.....PROPOSED 2ND RESPONDENT

R U L I N G

1. The Applicant herein applied by summons dated 09/09/2014 for revocation of the grant made and confirmed *in Kangema PM Succession Cause No.107 of 2010*. That application is yet to be heard or otherwise disposed of. In the meantime the Applicant has applied by **notice of motion dated 18/02/2015** for one **Charles Macharia Mwangi (Charles)** to be added to the summons for revocation as the 2nd Respondent. That application is the subject of this ruling.
2. The application is made upon the ground that the presence of Charles will enable the court “to adjudicate the matters before it fairly and justicially”. This is further elaborated by the pleading that though the land the subject-matter of the cause, LR LOC 8/Gatara/384 was registered in the name of the existing Respondent, Legina Nyambura Njuguna, it has since been acquired by Charles by way of sale during the pendency of the summons for revocation. The supporting affidavit sworn by the Applicant gives the factual background to the application.
3. The existing Respondent has not filed any papers in response to the application. But Charles has - a replying affidavit filed on 10/03/2015 - by which he opposes his joinder in these proceedings. He depones that he is currently the registered proprietor of the parcel of land in issue as absolute owner thereof by way of purchase from the existing Respondent; that he was a purchaser in good faith and for valuable consideration; that at the time of the purchase he was not aware of any dispute in respect of the land; that there was no other person, apart from the existing Respondent, in occupation of the land; that joining him in these proceedings will not assist the court as he is not a relative of the existing Respondent; and that in any event the application is against the law and an abuse of the process of the court.
4. I have considered the submissions of the learned counsels appearing. Charles’ objection to being joined in the summons for revocation of grant, as articulated by his learned Counsel in his submissions, is that he is protected under section 93 of the Law of Succession Act, Cap 160 in that he was a *bona fide* purchaser for value from the Administrator of the Deceased’s estate who was herself a beneficiary as per the certificate of confirmation of grant, and that he had no notice of the Applicant’s claimed interest.
5. However, in this present application the court is not dealing with the merits (or lack thereof) of the summons for revocation of grant. That will come later, and it will be necessary for him to be present in order to argue his case as he has prematurely urged it now! An order might well be made in the

summons for revocation of grant that would affect his rights as the now registered proprietor, and he need to be heard before such an order is made (if at all).

6. I therefore find that Charles Macharia Mwangi is a necessary party in the summons for revocation of grant to enable the court to fully and effectively adjudicate the application. He is added in that summons as the 2nd Respondent. It is so ordered. Costs of this application shall be in the cause.

DATED AND SIGNED AT MURANG'A THIS 22ND DAY OF SEPTEMBER 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 23RD DAY OF SEPTEMBER 2016