



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 144 OF 2001**

**IN THE MATTER OF THE ESTATE OF GITHUNGURI THARA (DECEASED)**

**PETER MUNGA GITHUNGURI .....OBJECTOR**

**-VERSUS-**

**GEOFFREY NGUGI GITHUNGURI.....1<sup>ST</sup> RESPONDENT**

**SERAH NJOKI MAINA .....2<sup>ND</sup> RESPONDENT**

**STANLEY MUNGA GITHUNGURI...INTERESTED PARTY**

**RULING**

1. For determination is a Summons filed herein on 17<sup>th</sup> June 2013, and taken out under Order 45 rule 1(1) of the Civil Procedure Rule, rule 60, 63(6) and 73 of the Probate and Administration Rules and Sections 92 and 93 of Law of Succession Act. It seeks the setting aside of the orders made on 2<sup>nd</sup> November 2011 and all the others made consequently thereafter and service of the interested party with the application dated 2<sup>nd</sup> December 2010. The alternative prayer is that the recall and cancellation of the title deed for Kiambaa/Kihara/T. 213 be set aside.
2. The application is premised on the grounds set out on the face of it, as well as in the affidavit sworn on 17<sup>th</sup> June 2013 by the third party, Stanley Munga Githunguri. The general grounds are that the Interested Party purchased the property Kiambaa/Kihara/T-213 for valuable consideration and the proceeds thereof applied to the beneficiaries. He avers that although he is a person directly and personally affected by the order, he was not served with the application dated 2<sup>nd</sup> December 2010 or heard before the order was made against his property. He avers that he did not acquire the property as a beneficiary but as a purchaser, that the parcel of land therefore does not form part of the estate of the deceased having been validly and lawfully sold to the interested party. He states that the court was misled into making the orders despite there being ample evidence to the contrary in his possession.
3. A perusal of the file reveals that the application is not opposed. There is no replying affidavit, nor are there grounds of opposition on record. There is evidence on record that the respondents had been duly served with the application dated 17<sup>th</sup> June 2013. Godfrey Kinyanjui Mbugua served them and swore the affidavit of service filed in the matter on 20<sup>th</sup> June 2013.
4. As the allegations of fact made in the application have not been controverted by the respondents, I am inclined to allow the same. I do hereby grant the application dated 17<sup>th</sup> June 2013 in the terms of the alternative prayer. For avoidance of doubt, the order made on 2<sup>nd</sup> November 2011 recalling the title deed in respect of Kiambaa/Kihara/T.213 for cancellation is hereby set aside. There shall be no order as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>ST</sup> DAY OF JULY, 2015.**

**W. MUSYOKA**

**JUDGE**