



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 962 OF 1997**

**IN THE MATTER OF THE ESTATE OF EDWARD MWANGI MWINGARURI (DECEASED)**

**RAHAB NANCY WANJIRU.....1<sup>ST</sup> APPLICANT**

**JOYCE SEET.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ARNOLD NJENGA.....1<sup>ST</sup> RESPONDENT**

**DOUGLAS GITHANGA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. For determination is a Notice of Motion dated 3<sup>rd</sup> May 2014 and brought under Rule 73 of the Probate and Administration Rules and all other enabling provisions of the law. It seeks that injunctive orders do issue to restrain the respondents from further subdividing original parcel of land known as Limuru/Ngecha/95 to new parcels numbers Limuru/Ngecha/1753 to 1758 and from selling or disposing of any part thereof pending the hearing and determination of the application.
2. The grounds upon which the application is predicated are set out on the face of the application as well as in the affidavit of the second applicant, Joyce Seet, sworn on 23<sup>rd</sup> May, 2014. The general grounds are that the respondents had fraudulently amended the original certificate of confirmation of grant in respect of the estate of the deceased and purported it to include Limuru/Ngecha/95 without obtaining the applicants' written consent. they are alleged to have subsequently proceeded to subdivide the said property among themselves without regard to the other beneficiaries of the estate of the deceased, and that the respondents are said to be in the process of selling the said property, that the respondents have not accounted for the money in the bank accounts of the deceased nor for the proceeds of the sale of the half acre land at Karen which they sold immediately after the deceased died.
3. The respondents have opposed the application. In that respect, the second respondent, Douglas Githang'a, swore an affidavit on 20<sup>th</sup> June 2014. He avers that Limuru/Ngecha/95 is the ancestral homestead which had been subdivided and distributed before the demise of the deceased, that the children of the deceased had each been given a portion of the said parcel of land and settled on the same prior to his death, and that the applicants were equally given a parcel of land which had been carved out of the said ancestral homestead, namely Limuru/Ngecha/T. 87

4. It was directed on 25<sup>th</sup> June 2014 that the application be disposed of by way of written submissions. Both sides have filed written submissions. The applicants' submissions were filed on 21<sup>st</sup> July 2014, while the respondents' submissions were filed on 21<sup>st</sup> August 2014.

5. I have paid due consideration to the application, the affidavits for and against, as well as the written submissions. The applicants' case is that they have since established that the respondents have subdivided the said property without the consent of all the beneficiaries and are likely to sell part of the said property without their consent. They further argue that they have filed an application for revocation of the grant made in this matter. It is therefore their case that if the instant application is not allowed they would suffer loss and damage.

6. The respondents contend that the subdivisions were done way back in 1999 and that the land was subdivided and transferred to third parties who have already settled on it. They state that the said third parties are well known to the applicants. It is submitted by the respondents that the application is baseless as it is grounded on conjecture and not on any evidence at all. They submit that the applicants have not placed any material before the court to support the allegation that they were planning to dispose of the property. They contend that the current registered owners of the parcels of land have not been enjoined into the cause as parties. They also assert that there is no evidence that there have been any surveyors lately trying to subdivide the land or there have been any people selling and buying the land.

7. My considered view, having taken everything placed before me into account, is that the applicants have not established that the said property is in danger of being wasted, damaged or alienated. What they have done instead is to make allegations that have not been substantiated in anyway whatsoever. It has not been shown that the respondents have threatened or intend to dispose of the said property. In short, there is no material upon which I can exercise discretion to issue restraining orders. The applicants have not satisfied me that they deserve the orders sought. They have not demonstrated to me how they will suffer loss and damage apart from merely mentioning so.

8. The application dated 3<sup>rd</sup> May 2014 is for dismissal and I do hereby dismiss the same. The respondents shall have costs thereof.

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

**W. MUSYOKA**

**JUDGE**

In the presence of Mr. Oluoch for Mr. Sane advocate for the applicant.