



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CASE NO. 48 OF 1989**  
**IN THE MATTER OF THE ESTATE OF**  
**EVA WANJIKU MARARO..... DECEASED**

**AND**

**DAVID MARARO WAIGI... PETITIONER**

**JUDGMENT**

1. David Mararo Waigi applied for grant of letters of administration of the estate of EVA WANJIKU MARARO deceased in his capacity as the widower which said letter was issued and confirmed on 11th June 1992.
2. On 9th February 2009 PATRICK KABUNGO MARARO applied that the grant issued to DAVID MARARO WAIGI be revoked or annulled on the ground that it had become useless or inoperative through the subsequent death of the administrator and on 18th May 2009 letters of administration were issued in favour of PATRICK KABUNGO MARARO and duly confirmed on 19th February 2010 with the only known asset of the estate known as LR. NO. 8470/2 being shared equally between PATRICK KABUNGO MARARO, JOHN WAIGI, MARY MURINGI, PETER WANGAI, JAMES WACHIRA and BEN MWAI.
3. On 20th February 2012 CATHERINE WAMUYU MARARO filed an application under Rule 44(1) and 73 of the Probate and Administration Rules and section 76 of the Succession Act Cap 160 for orders that:

- 1. That this application be certified as urgent and be heard in the first instance exparte pending service of the application.***
- 2. That this honourable court be pleased to restrain the Respondent in any manner from interfering with the Applicant's quiet stay and/or interfering with the Applicant's Tenants in rental houses constructed on Plot No. 8470/2 North Nyeri District (Game Rock) pending the hearing and determination of this application. Thus an order of status quo with regard to occupation, use do issue.***
- 3. That the honourable court be pleased to issue a Prohibitory Order against the transfer, sale and/or any dealing in the parcel of Land title No. 8470/2 North Nyeri District (Game rock) registered in the names of Patrick Kabungo Mararo, forming the estate of David Mararo Waigi, deceased, pending the hearing and determination of this application.***
- 4. That the honourable court be pleased to set aside the revocation order issued in favour of the Respondent in this matter. The proceedings to obtain grant were defective***

*in substance.*

**5. That the honourable court be pleased to revoke the certificate of confirmation of grant issued to PATRICK KABUNGO MARARO on 19th February 2010 as the process was irregular and fraudulent due concealment of material facts.**

**6. That the title deed for LR. No. 8470/2 North Nyeri District (Gamerock) do revert to the name of DAVID MARARO WAIGI and be made a subject of Nyeri H.C. Succession Cause No. 804 of 2011 in the matter of the estate of DAVID MARARO WAIGI (deceased) now pending in court.**

**7. Costs of this application be provided for.**

1. The application was grounded on the ground that the revocation of grant issued to David Mararo Waigi on 4th June 1992 was done irregularly and unprocedural since he had effected the transmission of grant of and LR NO. 8470/2 North Nyeri District (Game Rock) registered into his name on 3rd July 1992 and had been the registered owner until 2007 when he died.
2. That the right cause of action was to include the parcel of land in Nyeri Succession Cause No. 804 of 2011 in the matter of the Estate of David Mararo Waigi to be distributed to his beneficiaries and that the Applicant was not consulted.
3. On 23rd February 2012 the said application was certified urgent and prayers No. 2 and 3 thereof granted pending the hearing on 14th March 2012 interpartes and on 20th July 2012 directions were given that the application be disposed of by way of affidavit evidence and written submissions.
4. It was the Applicants evidence that she is one of the wives of the late David Mararo Waigi and an interested party in the subject matter before court and that David Mararo Waigi had caused the subject parcel of land to be registered in the name of one of his wives EVA WANJIKU MARARO and son PETER WANGAI MARARO.
5. When the said EVA WANJIKU MARARO died David Mararo Waigi filed for letters of administration and caused the land to be registered in his name and thereafter established matrimonial home thereat with the Applicant and that he bequeathed shared and designated to each of his sons to his first wife and to the Applicant their respective portions of LR NO. 8470/2 and that upon the death of the said David Mararo the Respondent under concealment and misrepresentation applied for revocation of grant.
6. That the Respondent did not make full disclosure of all the beneficiaries and that she was excluded while she has all along lived on the subject parcel of land as her matrimonial home and that of the estate of EVA WANJIKU MARARO had ceased to exist when the grant was confirmed and therefore it should form part of the estate of David Mararo Waigi the subject matter of succession cause No. 804 of 2011
7. In response thereto the Respondent on 14/3/2012 filed a replying affidavit in which he deponed that the land subject matter herein was always owned by their mother and brother Peter Wangai Mararo who still live on the land and that their later mother owned half share of the land and that the Applicant had filed Nyeri CMCC No. 5 of 2013 CATHERINE WAMUYU MARARO v PATRICK KABUNGO MARARO & ANOTHER where in she sought for an injunction among other orders.
8. That when the Applicant applied for succession in respect of the estate of David Mararo Waigi on 1st October 2011 she did not include the subject property.
9. **SUBMISSIONS**
10. On behalf of the Applicant it was submitted that David Mararo Waigi transferred the suit land to his wife EVA WANJIKU MARARO and her son PETER WANGAI MARARO as tenant in common in equal shares and after her death the property was transmitted back to him and was therefore at liberty to dispose of his property as he wished and that the only process through which a transfer can be done after his death was through a succession cause.
11. That the Applicant is actually living on the suit land and was never cited nor served with application for revocation of grant and in support the case of JANE GACHOKI GATHECHA v PRISCILLA NYAWIRA GITHANGU & ANOTHER was used in support of order to cancel the

- title issued as a result of fraudulent succession.
12. It was submitted that the Respondent did not follow the right procedure in obtaining the confirmation of grant herein and therefore the same was obtained irregularly and fraudulent due to concealment of material facts.
  13. On behalf of the Respondent it was submitted that the land was registered into the names of EVA WANJIKU MARARO and PETER WANGAI MARARO as tenant in common in equal shares and that DAVID MARARO whose grant was revoked and eventually awarded to the Respondent herein purported to completely oust even the surviving owner to the land while purporting to succeed his wife.
  14. It was further submitted that another surviving wife to David Mararo Waigi can not purport to take benefit of the said illegally and that the deceased David Mararo Waigi as the administrator of the estate of EVA WANJIKU MARARO deceased clearly misled the court since then Peter Wangai Mararo was alive and his interest was not reflected.
  15. For the purpose of this ruling I called for and perused succession cause No. 804 of 2011 Nyeri in the matter of Estate of DAVID MARARO WAIGI wherein PATRICK KABUNGO MARARO, CATHERINE WAMUYU MARARO and MARTHA WAMBUI GITONGA are the petitioners with IRENE ROSE WANJIRA MARARO the objector.
  16. I must point out that had the court been made aware of the existence of the cause in good time I would have ordered consolidation of those causes for determination.
  17. From succession cause No. 804 of 2011 and the property annexed there to it is very clear that every time the deceased purchased a property he would register it in his name his wife and one son belonging to the said wife. This is true of the suit property which was registered in the name of EVA WANJIKU MARARO as tenant in common LR. IRIAINI/KIAGUTHU/1039 registered in the name of the deceased IRENE WANJIRA MARARO and HUMPHREY WANGAI MARARO, NYERI MUNICIPALITY BLOCK 11/141 the deceased CATHERINE WAMUYU MARARO & MICHAEL KIBANYA MARARO , NYERI MUNICIPALITY BLOCK 11/140, DAVID MARARO WAIGI, BEN MWAI MARARO and IRENE ROSE WANJIRA MARARO.
  18. The issue therefore for determination is whether suit property known as Plot No. 8470/2 NORTH NYERI DISTRICT (GAME ROCK) which was registered in the name of EVA WANJIKU MARARO and PETER WANGAI MARARO could have been legally transmitted to the deceased alone.
  19. With due respect to Mr. Karweru Advocate I must point out that when a property is registered in common then each parties interest is identifiable and therefore the share of EVA WANJIKU MARARO was available for transmission to the beneficiaries of her estate and therefore the land should have been registered in the name of the deceased who had taken letters of administration for her estate and PETER WANGAI MARARO that having not been done then the letter of administration issued to DAVID MARARO WAIGI in respect of the estate of EVA WANJIKU MARARO should have been rectified to indicate the interest of PETER WANGAI MARARO.
  20. I therefore take the view that the said grant having been revoked and a fresh one issued to PATRICK KABUNGO MARARO the defect therein was cured.
  21. Was the said property therefore available for distribution in respect of the estate of DAVID MARARO WAIGI? Since the property was registered in common and DAVID WAIGI had taken out grant of letters of administration in respect of the said estate and had he transmitted half share thereof to himself legally then the same would have formed part of his estate and would have therefore been a subject of succession cause No. 804 of 2011. However at the time when the said cause was filed the grant had been revoked and afresh one issued in favour of the Respondent herein and could therefore not form part of that estate.
  22. Should this court therefore revoke the grant issued to PETER KABUNGO MARARO so that half of the said property be part of the estate of David Mararo?
  23. In answering this question I have looked at the property registered in the name of the deceased and his other wives and children and take the view that this property was meant for the family of EVA WANJIKU MARARO as is clear from the intention of DAVID MARARO.
  24. Since the property has been transmitted to the children of the said EVA WANJIKU MARARO who have all consented to the mode of distribution I take the considered view that this property known as LR NO. 8470/2 North Nyeri District (GAME ROCK) does not form part of the estate of DAVID MARARO WAIGI having been inherited by the rightful beneficiary.

25. The substantive justice in this matter demands that the said property be inherited by the family of EVA WANJIKU MARARO as per the intention of the deceased when he transferred the same to his name and had it registered in her name and her son.

26. I therefore find no merit in the application herein for revocation of the grant issued to PATRICK KABUNGO MARARO and dismiss the same.

27. Since this is a family dispute and there is still succession cause No. 804 of 2011 involving the same parties each party herein shall bear their own cost.

Dated and delivered at Nyeri this 27th day of February 2014.

J. WAKIAGA

JUDGE

Court:

Judgment read in open court in the presence of the Advocates and the parties. The Applicant has right of appeal

J. WAKIAGA

JUDGE