



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.1317 OF 2001**

**IN THE MATTER OF THE ESTATE OF MWAURA NJUGUNA (DECEASED)**

**SIMON GICHUHI NJUGUNA .....PETITIONER**

**VERSUS**

**JOHN NJUGUNA MWAURA.....OBJECTOR**

**RULING**

1. On 10th February 2012, I ordered parties herein to serve one, Erastus Njuguna Kamau, with Notice to appear and state his interest in the estate of the deceased herein. He was indeed served and in an Affidavit sworn on 21st November 2012, he gave a detailed account of his involvement and interest in Land parcel number Ngenga/Kahunguini/895 which was registered in the names of the deceased, Titus Mwaura Njuguna.
2. In a nutshell what he stated was that pursuant to a decree in Gatundu RMCC No.52 of 1986, a portion of Land parcel number 895 aforesaid was excised and transferred to him. Further, that, one Simon Gichuhi Njuguna, who was occupying the said portion land was evicted and that the “*portion that remained ... belongs to TITUS MWAURA NJUGUNA (now deceased).*”
3. With that background, it follows that Erastus Njuguna Kamau has no further interest in the deceased's estate and as I stated on 10th February 2012, I must now make a decision on the Protest filed By John Mwaura Njuguna on 6th May 2008.
4. In doing so, I must advert to my Ruling of 10th February 2012 in which I set out the facts relating to the Petition. Having now read and set out the position taken by Erastus Njuguna, my findings as regards the Protest by John Mwaura Njuguna are as follows;
5. Firstly, on 18th June 1991, Bosire J. (*as he then was*) agreed with a panel of Elders who had arbitrated in the dispute between the parties and in a Ruling made within HCCC No.2421/1985, found as a fact that the Protester had purchased a portion of Land parcel number 895 aforesaid but the said order could not be enforced as the land had since been sub-divided into land parcels Nos.Ngenda/Kahunguini/1022 and 1027 and one of them transferred to Erastus Njuguna Kamau.
6. Secondly, it would seem from the evidence on record that the portion claimed by the Protester is the same portion that was by a Court decree transferred to Erastus Njuguna Kamau and so there is really no remedy against the said Erastus Njuguna unless the decree in his favour is overturned and I note that an appeal against that decree has been abandoned.
7. Thirdly, the Protester seems to be pursuing an interest in both Land parcels numbers 1022 and

1027 but it is obvious that not all belong to the deceased and it is unclear to me what actually is left in the estate and in the name of the deceased.

8. Fourthly, it is obvious to me that the only remedy available to the Protester is a refund of the purchase price of Kshs.100/- plus interest at the rate of 10% per annum pursuant to **Section 26** of the **Civil Procedure Act**, such interest to be calculated from 12th February 1964 when the Sale Agreement was executed.

9. The above monies shall be paid by the Petitioner, Simon Gichuhi Njuguna from the estate of the deceased.

10. The Protester shall also have costs of the Protest which is determined in the terms above.

11. I hope that this Ruling will bring this long running dispute to an end.

12. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2013**

**ISAAC LENAOLA**

**JUDGE**

**In the presence of:**

*Irene – Court clerk*

*Mr. Gachuhi for Petitioner*

*No appearance for objector*

**Order**

*Ruling duly delivered.*

**ISAAC LENAOLA**

**JUDGE**

**Further Order**

*A copy of the Ruling to be delivered to the Parties.*

**ISAAC LENAOLA**

**JUDGE**

**22/2/2013**