



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**LAND AND ENVIRONMENT COURT**  
**E.L.C. NO.15 OF 2012**

ALICE WANJA KARIUKI.....PLAINTIFF

**VERSUS**

MARGARET WAIRIMU KINUTHIA.....DEFENDANT

**RULING**

On the 19/12/2012, the plaintiff filed this suit for an order of eviction against the defendant from the suit premises known as **LOC.2/MARIRA/2290**. He prayed for costs of the suit plus interest.

The defendant filed a Memorandum of Appearance and statement of defence on the 29/1/2013. The gist of the defence is that the plaintiff obtained title through fraud and collusion with one Esther Waithira Mwangi and an averment that there is a pending suit in the High Court being succession Cause No.3112 of 2012 in which the court has issued injunction against the plaintiff restraining her from evicting, disposing of and or trespassing on title **No.Loc.2/Mariira/2290**. I have not seen a reply to defence by the plaintiff likewise I have not seen an order for injunction.

On the 27th February 2012, the defendant filed an application for stay of all proceedings in this suit pending hearing and determination of Nairobi H.C. Succession Cause No.3112 of 2012 in the estate of Mwangi Gikonyo.

The grounds of the application are as follows:-

1. ***The dispute the subject of this suit being title No.LOC.2/MARIIRA/2290 is the subject of revocation of grant made in Nairobi HCCC Succession Cause No.3112 of 2012 estate of Mwangi Gikonyo (deceased).***
2. ***The outcome of Nairobi HCCC Succession Cause No.3112 of 2012 estate of Mwangi Gikonyo (deceased) will adversely affect the status of the plaintiff in the event that the grant issued to the administrator thereto is revoked.***
3. ***The plaintiff in the presence case is named as respondent in Nairobi HCCC Succession Cause No.3112 of 2012 estate of Mwangi Gikonyo (deceased).***
4. ***There are injunction orders made against the plaintiff and her co-respondent in Nairobi HCCC Succession Cause No.3112 of 2012 estate of Mwangi Gikonyo (deceased).***
5. ***It is in the interest of justice and in order to save judicial time that this suit be stayed pending***

***the hearing of Nairobi HCCC Succession Cause No.3112 of 2012 estate of Mwangi Gikonyo (deceased).***

The application is supported by the affidavit of Margaret Wairimu Kinuthia, the defendant/applicant.

The plaintiff/respondent has opposed the application by filing a replying affidavit whose import is that the two suits raise different issues of law and that the title documents are in her name a fact that is very instrumental in the determination of the suit.

The summarized facts of this matter are that the plaintiff is the registered proprietor of the suit land, the same having been transferred to her by the **administratrix** of the estate of Mwangi Gikonyo (deceased) whilst the defendant is in possession of land having been given

vacant possession by Mr. Mwangi Gikonyo, the **deceased**.

The genesis of this dispute is the transfer of the suit property by Esther Waithira Mwangi to the plaintiff as the **administratrix** of the estate of the deceased. Esther Waithira Mwangi was issued with the letters of administration *intestate* on **24/8/2010**.

The grant issued to the above mentioned was confirmed on the 17/10/2010 pursuant to the provision of Sections 71 and 73 of the Law of Succession Act Cap 160 Laws of Kenya.

The defendant applicant has applied to revoke the grant issued on 24/8/2010 on grounds that there was concealment from the court of something material to the case. In the affidavit in support of summons for the revocation or annulment of grant the applicant deposes that he bought the suit land and took possession of the same. He has constructed a permanent house thereon, planted tea bushes and has developed the said parcel of land extensively.

The court finds that the issues before the court in Succession Cause No.3112 of 2012 revolve on the issuance of grant to Esther Waithira Mwangi and he subsequent transfer of the land parcel **No.LOC.2/MARIIRA/2290** to the defendant. Any order of eviction as prayed in the plaint in this matter would prejudice the application by the defendant to revoke the grant issued to Esther Waithira Mwangi due to the fact that if the grant is revoked the transfer would be a nullity. This court has no desire to go into the merit of the application to revoke the grant but is guided by Section 2A & 3A of the Civil Procedure Rules that provides for overriding objective of the law. This court has power to make such orders for ends of justice and for proper administration of justice. Succession Cause No.67 of 2001 was commenced earlier than the suit herein and therefore any process arising from the succession cause should be given priority. Though the application for revocation of grant was filed after the filing of the suit herein, the succession cause was commenced before the filing of the suit at the Kigumo Magistrates Court.

Section 6 of the Civil Procedure Act is relevant in assisting the court to determine the application herein. I do find that the matter in issue in the suit herein is directly and substantially in issue in the High Court Succession Cause No.3112 of 2012 between the same parties or parties under whom they claim, litigating under the same title within courts of competent jurisdiction. For avoidance of doubt Esther Waithira Mwangi, who sold the suit property to the defendant is representing the interests of the defendant in the Succession Cause.

The upshot of the above is that the application is allowed. Costs in the cause.

***Dated, signed and delivered at Nyeri this 13th day of June 2013.***

**A. OMBWAYO**

**JUDGE**

