



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CASE NO. 27 OF 2012**

**ESTHER WANGUI NJOGU .....DECEASED**

**AND**

**JOHNSON KIRAGU WACHIRA.....PETITIONER**

**versus**

**ALI NDIRITU NJOROGE.....1ST RESPONDENT**

**PETER MUCHIRI NGATIA.....2ND RESPONDENT**

**RULING**

1. By summons General brought under section 45 Succession Act and Rules 49, 59 & 73 P&A Rules the applicant herein JOHNSON KIRAGU WACHIRA moved the court for the following orders:
  1. ***That the application be certified urgent and be heard exparte at this first instance.***
  2. ***That an order do issue canceling the registration of ALI NDIRITU NJOROGE as the proprietor of LR MAHIGA/KIHOME/177 on 14th February 2012 and all subsequent subdivisions i.e MAHIGA/KIHOME/1609 and LR MAHIGA/KIHOME/1610 registered in the names of PETER MUCHIRI NGATIA and ALI NDIRITU NJOROGE respectfully on 12th July 2012 and 3rd May 2012 and the parcel of land and revert to its original LR MAHIGA/KIHOME/177.***
  3. ***That The said ALI NDIRITU NJOROGE and PETER MUCHIRI NGATIA be restrained by temporary injunction of the deceased till cause is determined.***
  4. ***That the said ALI NDIRITU and PETER MUCHIRI NGATIA be further restrained by a temporary injunction with interfering with the applicant enjoyment, cultivating, picking tea and coffee and or in any other way from interfering with the applicants access into L.R. MAHIGA/KIHOME/177 and subsequently subdivision to wit LR. MAHIGA/KIHOME/1609 and 1610.***
1. The application was supported by the affidavit of JOHNSON KIRAGU WACHIRA in which he deponed that pursuant to Nyeri HCC.Succ Cause No. 30 of 2003 court ruled that MAHIGA/KIHOME/177 be shared between him and ESTHER WANGUI NJOGU. That the said Esther Wangui Njogu died and the land was not subdivided so he filed the present cause having caused a restriction to be lodged on LR. MAHIGA/KIHOME/177.

2. That on or about 6th September 2012 stranger invaded the said land and started to subdividing the same and that a search conducted on 7th September 2012 confirmed that ALI NDIRITU NJOROGI was registered as proprietor on 4th February 2012 and on 3/5/2012 the suit land was subdivided which registration he believed to be fraudulent since the court in succession cause No. 308 of 2003 found that the said ALI NDIRITU NJOROGI was not entitled to the said land and that this cause in respect of the estate of ESTHER WANGUI NJOGU is still pending.
3. This matter came before the court ex parte when prayer No. 1, 2 and 3 were granted and the matter fixed for inter partes hearing.
4. In opposition to the said application the first respondent filed grounds of opposition herein that he was granted letters of administration on 14th July 2005 and was registered proprietor on the strength of the said letter of administration and that the registration of the applicant as proprietor of the said land was fraudulent and that the applicant remedy lies elsewhere and not in these proceedings.
5. The second Respondent filed a replying affidavit to wit that he was bona fide purchaser for value.
6. Directions were given that the application be heard by way of written submissions which have now been filed.

### **SUBMISSIONS**

7. On behalf of the applicant it was submitted that pursuant to Nyeri HC.SUCC. Cause No. 308 of 2003 LR MAHIGA/KIHOME/177 was to be shared between the applicant and the deceased ESTHER WANGUI NJOGU in which the 1st respondent was the petitioner the court having ruled that he was not entitled to share in the said land which ruling was never appealed against and that pursuant to the certificate of confirmation on 12th July 2011 the applicant and ESTHER WANGUI NJOGU were registered as joint heirs of the land.
8. That notwithstanding restrictions placed on the land on 14th February 2012 the 1st Respondent using the same Nyeri Succession Cause No. 308 of 2003 was registered the sole proprietor of LR. MAHIGA/KIHOME/1609 and the 2nd Respondent 1610.
9. On behalf of the 1st respondent it was submitted that the same was together with Daniel Maina Murugi were the administrators of the estate of the late NJOGU GICHOMI in which the court awarded the applicant and ESTHER WANGUI NJOGU 3 and 2.09 acres respectively and that the 1st Respondent applied to be registered proprietor by transmission under section 119(1) Cap 300 and execute his duty by causing the land to be subdivided according to the ruling of the court delivered on 22nd July 2009 in Nyeri Succession cause No. 308 of 2003 of which he is willing to transfer LR MAHIGA/KIHOME/1609 to the applicant.
10. It was submitted that it is the applicant who fraudulently and by presenting false documents caused himself and the deceased to be registered as proprietor of LR MAHIGA/KIHOME/177 on 12th July 2011 while ESTHER WANGUI died on 3rd December 2009.
11. It is further submitted that the applicant herein filed the present petition without an introductory letter from the Chief and that the relationship between the applicant and the deceased is not disclosed.
12. On behalf of the 2nd Respondent it is submitted that he was approached to buy the land and had no knowledge of the events that had taken place before July 2012 and that the applicant has not blamed him in the application.
13. It was submitted that land MAHIGA/KIHOME/1609 has gone to an innocent party who acquired it for value and without any notice of any irregularity that may have happened and is therefore protected by section 93 of the Law of Succession. He has therefore urged the court not to cancel title MAHIGA/KIHOME/1609 since he is an innocent purchaser.
14. It was further submitted by the applicant that the 1st respondent was charged with criminal offence in Nyeri CM. CR. C. No. 840 of 2012 and on 17th November 2013 the said criminal case was withdrawn after the land was reverted to its correct position as at 12th July 2011.
15. From the submission herein and the pleadings before the court and the documents submitted there is a fundamental issue which the 1st respondent has not addressed and which to my mind goes to the root of this application and that is how the land was registered in his name in view of the restriction placed on the title as at 8th February 2012.
16. Whereas it has been submitted that the 1st respondent is the administrator of the estate of NJOGU

- GITHIOMI the main question is why he did not effect the grant as issued by the court.
17. I have had the privilege of reading the judgment of Makhandia J as he then was and it is clear that there are people who might also be interested in the parcel of land which the court had given to ESTHER WANGUI NJOGU and therefore the 1st Respondent did not have any right to sell the same.
  18. I have also noted that the 2nd Respondent though claiming to be an innocent purchaser for value has not annexed any evidence in support of his alleged purchase and therefore equity can not come to his aid.
  19. I therefore allow the application herein in terms of prayer 2 that is order canceling the registration of ALI NDIRITU NJOROGI as the proprietor of LR MAHIGA/KIHOME/177 on 14th February 2011 and all subsequent subdivisions ie MAHIGA/KIHOME/1609 and LR MAHIGA/KIHOME/1610 registered in the names of PETER MUCHIRI NGATIA and ALI NDIRITU NJOROGI respectively on 12th July 2012 and 3rd May 2012 and order that the parcel of land do revert to its original LR MAHIGA/KIHOME/177
  20. I further order that the said ALI NDIRITU NJOROGI and PETER MUCHIRI NGATIA be and are hereby restrained by way of an injunction from interfering with the applicants enjoyment, cultivating, picking tea and coffee or in any other way from interfering with the applicants access into LR MAHIGA/KIHOME/177 and subsequent subdivisions thereon pending the final determination of this succession cause.
  21. The 1st Respondent shall pay the cost of the application.

Dated and delivered at Nyeri this 19th day of September 2013.

J. WAKIAGA

JUDGE

Court: The Ruling is read in open court in the presence of Mr. Kiminda and in the absence of the Respondent.

J.WAKIAGA

JUDGE