



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 274 OF 2010

IN THE MATTER OF JONAH KAGECHU MUGEKENYI alias JOHNAH KAGECHU
(DECEASED)

AND

SAMUEL KAGECHA MWANGI.....PETITIONER

VERSUS

EDWARD KIMANI GACHANGO & OTHERS.....PROTESTORS

JUDGMENT

On 25/02/2011, this court issued an order staying further proceedings in this cause. In the same ruling, this court directed the Protestors' to file the necessary action to establish their claim based on trust. It would appear the 90 days lapsed before the action was filed. On 4th November, 2011 this court proceeded to issue orders confirming the grant on the application of the Petitioner. The Protestors' have now taken out the summons dated 12th July, 2012 in which they seek for *inter alia*:

- (i) An order for stay of survey of the estate land.**
- (ii) An order extending time by 90 days to file an action to establish their claim based on trust.**

The main reason advanced in support of the application for extension of time is that their erstwhile advocate did not inform them of the court's orders directing them to file a suit based on trust. The Respondent on the other hand stated that the Protestors' were not candid. The Respondent annexed correspondences exchanged between learned advocates showing the Protestors' were actually negotiating for an out of court settlement. After a critical examination of material placed before this court, I am convinced the Protestors' are not as innocent as they represented to this court. I am satisfied, their erstwhile advocate informed them the decision of this court and that is why their advocate Mr. Gacheru wrote to the Respondent's advocate seeking to settle the dispute out of court. I therefore see no merit in the application. In any case the order confirming the grant has been given. Even if I gave the orders extending time for the Protestors' to file a suit, it will serve no useful purpose because the confirmed grant must first be revoked and or annulled to accommodate the Protestors' claim if any.

For the above reason, I find the Protestors' application without merit. It is dismissed with costs to the Respondent.

Dated, Signed and delivered this 16th day of December 2013.

J.K.SERGON

JUDGE

- In open Court in the presence of Mr. Wachira holding brief of Mr. Kirubi for Respodent.
- N/A for the Applicant.