



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE 44 OF 1990**

**DORCAS NDUTA**

**MACHARIA.....PETITIONER/DECEASED**

**-versus-**

**JAMES MURAYA MACHARIA.....1<sup>ST</sup>  
OBJECTOR/DECEASED**

**RICHARD WACHIRA MACHARIA.....RESPONDENTS/2<sup>ND</sup> OBJECTOR  
(APPLICANT)**

**A N D**

**BEATRICE WARINGA MURAYA.....1<sup>ST</sup>  
RESPONDENT**

**MARGARET W. M. RUNG'ARE.....2<sup>ND</sup>  
RESPONDENT**

**GEOFFREY NJUGUNA MACHARIA.....3<sup>RD</sup>  
RESPONDENT**

**BONIFACE GATHEGE MACHARIA.....4<sup>TH</sup>  
RESPONDENT**

**BENSON KARIUKI MACHARIA.....5<sup>TH</sup>  
RESPONDENT**

**BEATRICE WANGARI MACHARIA.....6<sup>TH</sup>  
RESPONDENT**

**ROSELYNE WAGIKUYU MBOGO.....7<sup>TH</sup>  
RESPONDENT**

**JOAN NYOKABI MACHARIA.....8<sup>TH</sup>  
RESPONDENT**

JOSEPHINE NYOKABI MACHARIA.....	9 <sup>TH</sup>
RESPONDENT	
JEMMIMAH WAKONYO MACHARIA.....	10 <sup>TH</sup>
RESPONDENT	
SAMUEL G. MWANGI.....	11 <sup>TH</sup>
RESPONDENT	
GATHEGE RUNG'ARE.....	12 <sup>TH</sup>
RESPONDENT	
NYOKABI JOSEPHINE NJUGUNA.....	13 <sup>TH</sup>
RESPONDENT	
JOHN MACHARIA MURAYA.....	14 <sup>TH</sup>
RESPONDENT	
BENCET COMPANY LIMITED.....	15 <sup>TH</sup>
RESPONDENT	

### R U L I N G

Pursuant to the provisions of **Rules 49,59(1)** and **73** of the **Probate and Administration Rules**, **Richard Wachira Macharia**, hereinafter referred to as the Applicant took out the Amended Summons (General) dated 14<sup>th</sup> March, 2011 in which he sought for the following orders:

- 1. That this Honourable Court may be pleased to order for cancellation of the transfer of Land Reference Number 3471/2 – Nyeri to the Respondent till the final disposal of the matter in dispute.***
  
- 2. That this Honourable Court be pleased to set aside the order dated 18<sup>th</sup> February, 2011 or order for status quo to be maintained till the final disposal of this cause.***
  
- 3. That the costs of this application be awarded to the Applicant.***

The Applicant filed a supporting affidavit he swore on 14<sup>th</sup> March, 2011. Beatrice Waringa Muraya hereinafter referred to as the Respondent filed a replying affidavit to oppose the summons. When the summons came up for interpartes hearing, the Applicant who appeared in person and Mr. Maatwa, learned advocate for the Respondent merely informed this Court to consider the material placed before this Court to determine the summons.

It is the submission of the Applicant that the Respondent fraudulently caused the parcel of land known as **L.R. No.3471/2** to be transferred to the Respondent. It is also alleged that the grant was fraudulently obtained. In his affidavit, the Applicant avers that the parcels of land known as **L.R. Nos.3471/1 and 3471/2** were allocated to the 1<sup>st</sup> house and that he and the Respondents were supposed to share equally. The Applicant averred that the parcel of land known as **L.R. No.3471/2** had not been registered in the name of the Respondent's husband hence the same could not form part of his estate and that is why

the Respondent was advised vide **Nyeri High Court Succession Cause No.72 of 2008** to claim the share of her late husband through the aforesaid Succession. The Applicant averred that he and his late brother (James Muraya Macharia) were to share the land equally. He complained that the amended certificate of grant issued on 21<sup>st</sup> November, 2008 which awarded him **L.R. No.3471/1 and L.R. No.3471/2** to the Respondents is disputed. He claimed that the amended certificate confirmation of grant was fraudulently obtained as he was not a party to the application hence he did not approve the application for rectification of grant. In her response, the Respondent filed a replying affidavit to resist the summons in which she stated that the family met on 9<sup>th</sup> June, 2008 whereof they agreed except for the Applicant to have the grant rectified to reflect how the estate should be distributed. She attached to the replying affidavit the minutes of the meeting. It is clear from the minutes that the Applicant was present in the meeting which authorized the rectification of the certificate of Confirmation of Grant. The Respondent urged this Court to find that there was no evidence that she committed fraud.

After a careful consideration of the material placed before this Court, it is clear in my mind that the parcel of land known as **L.R. No.3471/2** was transmitted to the Respondent, Waringa Muraya vide the certificate of Confirmation of Grant dated 21<sup>st</sup> November, 2008. The Applicant herein vide the same grant was given **L.R. No.3471/1**. The Applicant has not deemed it fit to file an application to have the grant revoked and or annulled. He has simply come to Court to ask the Court to cancel the title which has already been transferred to the Respondent by transmission. If I issue the orders, the Court will in effect be going against the order confirming the grant. Even if I had found the application to be properly before this Court, I doubt whether I would have given the orders. In my opinion, the Applicant had failed to establish the particulars of fraud on the part of the Respondent. The material placed before me shows that the Applicant participated in the meetings giving rise to the schedule of distribution. He may not have agreed with the family resolutions but nevertheless, he was overruled by the majority. There is no iota of evidence that the Respondent committed any fraudulent act in the Cause.

Having failed to establish the particulars of fraud, the summons must be dismissed which I hereby order. Since the dispute involves members of the same family, I direct that each party meet his or her own costs.

**Dated and delivered this 27<sup>th</sup> day of April 2012.**

.....  
**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Gitibi holding brief for Mr. Maatwa the Respondent and no appearance the Applicant in person.