



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
Succession Cause 891 of 1995

**FRANCIS WANJIHIA CHEGE.....RESPONDENT/PETITIONER**

**VERSUS**

**SOPHIA MWIHAKI WANJIHIA ..... 1<sup>ST</sup> RESPONDENT**

**WILLIAM CHEGE MUNIU ..... 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

This application is brought by a Summons dated 13<sup>th</sup> February, 2012 and taken out under **Rules 59 (1) and 73 of the Probate and Administration Rules of the Law of Succession Act**. The Applicant hereby seeks orders that –

1. ... (*Spent*).
2. *The Respondents/Objectors by themselves, their agents, servants, workers, contractors and/or employees be restrained by way of an injunction from carrying out any further mining, excavation, blasting, extraction of stones and its related products and/or engaging in such like related physically degrading quarry activities on L.R. No. NGONG/NGONG/1175 pending the hearing and determination of the subject proceedings and/or further orders of the Court.*
3. *Pending the hearing of the instant application inter partes there be an interim order in terms of prayer 2 hereinabove.*
4. *The costs of this application be provided for.*

The application is supported by the annexed affidavit of Francis Wanjihia Chege sworn on 13<sup>th</sup> January, 2011 (sic) and is based on the grounds that –

***(a) The Applicant is the registered owner of the suit property L.R. No. NGONG/NGONG/1175 which is also the subject of pending objector proceedings herein.***

***(b) There is pending before this Honourable Court objector proceedings lodged by the 1<sup>st</sup> Respondent against the confirmed grant issued to the Applicant in respect of the estate of the late MARY WANJIKU CHEGE and touching on the suit property.***

***(c) The Respondents have engaged in acts of wanton destruction of the suit premises by converting it into a quarry and engaging in unauthorized mining and excavation of building stones and other related products including through use of explosives, blasting and such like related activities leading to wanton waste and damage of the suit premises and the Applicant is bound to suffer and the suit premises destroyed irreparably.***

***(d) Save for the pending objector proceedings the Respondents have no sustainable and/or legitimate claim over the suit property and the acts complained of lack the consent of the Applicant.***

***(e) The interests of justice dictate that the orders sought be granted to safeguard the suit premises and the Applicant's interests.***

When the matter came for hearing *inter partes*, Ms. Wambua appeared for the Applicant. The Respondents did not attend. An affidavit of service on record shows they were served with all the relevant documents on 24<sup>th</sup> January, 2012. On being satisfied that they were served in sufficient time to file a replying affidavit or grounds of opposition and appear in Court on the hearing date, the Court elected to proceed *ex parte*.

As indicated earlier both in the pleadings and in the submissions of Ms. Wambua, the Applicant is the registered owner of the property affected by the nefarious acts of the Respondents. The Respondents do not have any colour of right to conduct activities which are inimical to the Applicant's proprietary rights and interests. On the contrary, the Applicant has a legal right and is entitled to have quiet enjoyment of the rights over his property. Bearing in mind the old adage that "a stitch in time saves nine," it is imperative that the Respondents be stopped from interfering with the Applicant's enjoyment of his property. If that is not done promptly, the Applicant's house could be seriously adversely affected and even totally destroyed due to no fault of his own.

For these reasons and taking into account the fact the application is not opposed, prayer 2 of the application by Summons dated 13<sup>th</sup> January, 2012 is hereby granted as prayed. The Respondents will meet the costs of this application.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 3<sup>rd</sup> day of May, 2012.**

**L. NJAGI**  
**JUDGE**