



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE 1191 OF 2011**

**IN THE MATTER OF THE ESTATE OF PETER NDEGWA J. WANJIE (DECEASED)**

**AND**

**JOSEPH WANJII NG'ANG'A.....APPLICANT**

**versus**

**THOMAS KAMAU NDEGWA.....RESPONDENT**

**RULING**

The application before the court is dated 21<sup>st</sup> November 2011 brought under Rule 73 of the Probate and Administration Rules of Cap 160 Laws of Kenya in which the Applicant is seeking an injunction to restrain the Respondent his agents, servants and or anyone claiming under him in any other way dealing with land parcel LOC.11/MARAGI/089 pending the hearing and determination of the Summons for Revocation and or annulment of grant.

The application is supported by the affidavit of JOSEPH WANJII NG'ANG'A and a supplementary affidavit sworn on 21<sup>st</sup> November 2011 and 15<sup>th</sup> March 2012 respectively.

The Applicant has deponed that he has filed an application for revocation of grant issued in Kangema Senior Resident Magistrate's court in Succession cause No. 90 of 2010 issued to the Respondent herein and that the Respondent who has registered the land parcel No. Loc.11/MARAGI/089 in which the Applicant has an interest could transfer the same to a third party to the detriment of the Applicant and thereby defeating the purpose of the Summons for Revocation of Grant.

The background of his claim is that he had filed a protest against the confirmation of grant in favour of the Respondent and that they mutually agreed that he withdraw the protest on condition that the Respondent would transfer to him the suit land after confirmation.

He deponed that 6.3 acres of the suit land was to be held on his behalf or in trust for him by his father as evidenced by annexures JWN 6 and 7 to the supplementary affidavit and that the suit land has already been subdivided to reflect the said position. He further states that his father built his house thereat in 1950 while he build his in 1992 and his mothers house was built thereat in 2004. He further stated that his father was buried on the said land in 2008 while the owner of the land was still alive and no issue was raised then.

It is also clear that when the Respondent applied for confirmation of grant herein he included the

name of the Applicant as persons who survived the deceased.

The Respondent in opposing the application herein stated that if the Applicant had any challenge with the grant and distribution of the estate he could have presented his protest thereto which he otherwise willingly withdrew and that the Applicant has no valid claim to the estate as the issue he is raising have been litigated upon between his late father MICHAEL NG'ANG'A WANJII and the deceased in Nairobi HCCC No. 727 of 1979.

With the above pleadings the court is called upon to determine whether the application before the same has merit thus registered upon which the grant for an injunction may be issued.

The first ground is whether the Applicant has established a prima facie case with probability of success.

In answer to this question I have looked at the proceedings during the hearing of an application for confirmation of grant and in particular the fact that the Respondent has included the name of the Applicant as a possible beneficiary to the estate of the deceased herein and the affidavit of protest annexed herein and the subsequent withdraw of the same and the explanation given by the Applicant as to why he withdraw the protest against the Respondent claim herein as stated in paragraph 5 of replying affidavit. I have also taken into account the submission by Mr. Muhoho advocate for the Applicant that the Respondent own father had subdivided the suit land into three portions one which was supposed to go to the Applicant's father and is of the considered view that the Applicant has a prima facie case. Whether the Applicant has capacity to litigate with the Respondent as submitted by Mr. Kingori for the Respondent are issues which are best left for the court that shall determine the application for revocation.

The other issue is whether the Applicant stands to suffer irreparable loss which can not be compensated by way of damages should the orders sought herein not be granted.

In answer to this question I have taken into account the fact that the Applicant's father constructed his house at the suit land in 1950 and that the Applicant and his family have been on the suit land since the said date and has taken into account the litigation history in respect of the suit property as submitted by both advocates and is of the considered opinion that the Applicant would suffer irreparable loss should the ordered sought herein not be granted.

The balance of convenience has denied that the orders sought by the Applicant be granted since the Respondent will suffer no hardship herein.

I therefore grant an order of injunction against the Respondent his agents, servants or anyone claiming under him from selling, alienating, transferring or in any other way dealing with land parcel LOC.11/MARAGI/1098 pending the hearing and determination of the summons for Revocation and or annulment of grant herein with cost being in the cause.

**Dated and delivered at Nyeri this 23<sup>rd</sup> July 2012.**

**J WAKIAGA  
JUDGE**

Delivered in open court in the absence of the advocates.

Joseph Wanjii Ng'ang'a applicant

Thomas Kamau Ndegwa respondent

**J WAKIAGA**

**JUDGE**