



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO.578 OF 2004**

IN THE MATTER OF THE ESTATE OF  
KIRAGU NGIGIE *alias* KIRAGU NGEIGIE.....DECEASED

**AND**

DAINA NYAMBURA KIRAGU.....PETITIONER

**RULING**

In the summons dated 10<sup>th</sup> November, 2011, Daina Nyambura Kiragu, the petitioner herein, applied for an order of injunction to restrain Alexander Ngegie Kiragu, the objector herein from preventing her, her servants and or family members from picking tea in her portion of the parcel of land known as L.R. No.Chinga/Gikigie/1218. The petitioner filed an affidavit in support of the summons. Alexander Ngegie Kiragu passed away and on 27/1/2009, he was substituted with Grace Wanjiru Ngigie who filed a replying affidavit to oppose the summons.

The petitioner alleged that on 4<sup>th</sup> October 2011, the Respondent sent her son Isaac Kwiha to enter into the aforesaid parcel of land whereupon he stopped the petitioner's servant James Gachau from picking tea by threatening to use violence against him if he did not heed his demands. For the above reason the petitioner asked this court to grant her the orders so that law and order can be maintained. The petitioner claimed that she made several demands but the Respondent has been adamant. In her replying affidavit, Grace Wanjiru Ngigie, urged this court to find the application to be without merit and that the same is scandalous and vexatious. It is the Respondent's averment that the Applicant was appointed as the administratrix of the estate on 23/03/2005 and the temporary grant is yet to be confirmed. The Respondent further pointed out that the summons for confirmation of grant was stayed pending the hearing and determination of a summons for revocation of grant dated 4<sup>th</sup> July 2005. It is deponed that the applicant has not been in occupation of the land in question hence the issue of being prevented does not arise. The applicant did not deem it fit to respond to this later serious averment. It is alleged that the petitioner is not in occupation. I think the issue to be determined is whether or not the Respondent prevented the petitioner from picking tea on the portion she claims to be entitled. The respondent does not deny preventing the petitioner from picking tea. It is clear from the chief's letter of introduction dated 6<sup>th</sup> December 2004 that the late Alexander Ngigie Kiragu and Daina Nyambura Kiragu are children who survived the deceased. It is not clear whether both of them resided and utilized the land in question, since 2002. It was incumbent upon the applicant to show that she has been picking tea on the land in dispute. She has simply stated that on 4/10/2011 the Respondent allowed her son, Isaac Kwiha to enter the land wherein he stopped her servant from picking tea. I am convinced by the affidavit averments of the Respondent that the petitioner has not been in constant use of the land for a long time. I am not satisfied that the applicant has shown a prima facie case hence I will not grant the orders of injunction. Consequently the summons dated 10/11/2011 is dismissed. It is prudent for the parties involved in this cause to expedite the hearing and determination of the summons for revocation of grant. Costs shall await the outcome of these proceedings.

**Dated and delivered this 17th day of August 2012.**

**J.K. SERGON**

**JUDGE**