



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO.143 OF 1990**

**IN THE MATTER OF THE ESTATE OF WANJOHI KAMAU KIBE (DECEASED)**

**MARGARET NYAMBURA WANJOHI**  
**STEPHEN GATHUMBI WANJOHI**

**SALOME WANGUI**  
**WANJOHI.....APPLICANTS**

**VERSUS**

**TERESIA WAMBUI GITAU &**

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**OTHERS.....RESPONDENTS**

**R U L I N G**

There are two applications for determination by this court. The first application is dated 9<sup>th</sup> June 2010. In the said application, the applicants seek to revoke the grant of probate of written will that was issued to the 1<sup>st</sup> respondent on 7<sup>th</sup> May 1990. The same had been confirmed on 2<sup>nd</sup> November 1990. The applicants contend that the said grant was issued without taking into consideration the fact that all the beneficiaries of the deceased had not been provided for. The second application is dated 13<sup>th</sup> August 2010. In the said application, the applicants seek orders from the court to restrain the respondents by themselves or their agents from cutting or clearing trees in the applicants' portion of land measuring 5 acres in the parcel of land previously owned by the deceased known as LR.No.Githunguri/Githunguri/444 pending the hearing of the application seeking the revocation of grant of probate. Both applications are opposed by the respondents.

At the hearing of the application, this court heard rival oral submissions made by Mr. Kinuthia for the applicants and by Mr. Muhoro for the 1<sup>st</sup> respondent. I have carefully considered the said submissions and the pleadings filed by the parties herein in support of their respective opposing positions. It clear from the said submissions that the applicants, who are beneficiaries and dependants of the estate of the deceased, were not consulted before the respondents applied for the grant of probate to be confirmed. It is also apparent that the applicants did not give their consent as mandatorily required by the law before the properties that comprised the estate of the deceased were distributed. Some of the dependants of the deceased were excluded during the distribution of the estate of the deceased. The 2<sup>nd</sup> respondent, Joshua Kibe Wanjohi registered himself as the sole proprietor of the parcel of land known as Githunguri/Githunguri/444 yet even the will which the respondents relied on to lay claim on the said parcel of land provided that the said Joshua Kibe Wanjohi was to hold the said parcel of land together with another parcel of land measuring 26 acres at Ngeteti Farmers Company Limited, Gilgil in trust for himself and some of the applicants who include Margaret Nyambura Wanjohi, Daniel Ruiru, Jacob Kuria and Isaac Kamau. It is therefore evident that the applicants have a case and indeed have established a prima facie case entitling this court to restrain the respondents from interfering with the subject parcels of land namely, Githunguri/Githunguri/444 and the 26 acres at Ngeteti Farmers Company Limited, Gilgil pending the hearing and determination of the application seeking the revocation of grant for the sole purpose of specifically addressing the question whether all the dependants of the deceased were provided for when the said grant was confirmed.

In the premises therefore, this court holds that the applicants have established a prima facie case. The respondents, both jointly and severally, are hereby restrained by means of an injunction from interfering with the character and ownership of the parcels of land known as Githunguri/Githunguri/444 and the 26 acres at Ngeteti Farmers Company Limited pending the hearing and determination of the application for revocation of grant. In particular, the 2<sup>nd</sup> respondent is prohibited from transferring or otherwise adversely dealing with the parcel of land known as Githunguri/Githunguri/444 pending the hearing and determination of the application for revocation of grant. The costs of the application shall abide the outcome of the application for revocation of grant. It is so ordered. The parties shall be at liberty to move the court for appropriate directions.

**DATED AT NAIROBI THIS 21<sup>ST</sup> DAY OF JANUARY, 2011**

**L. KIMARU**  
**JUDGE**