



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 44 OF 1990

IN THE MATTER OF THE ESTATE OF JOHN MACHARIA RUNG'ARE– (DECEASED)

DORCAS NDUTA MACHARIA.....PETITIONER/DECEASED

VERSUS

JAMES MURAYA MACHARIA.....1ST OBJECTOR/DECEASED

RICHARD WACHIRA MACHARIA.....RESPONDENT/2ND OBJECTOR

AND

BEATRICE WARINGA MURAYA.....APPLICANT/1ST RESPONDENT

MARGARET W. M. RUNG'ARE.....2ND RESPONDENT

GEOFFREY NJUGUNA MACHARIA.....3RD RESPONDENT

BONIFACE GATHAEGE MACHARIA.....4TH RESPONDENT

BENSON KARIUKI MACHARIA.....5TH RESPONDENT

BEATRICE WANGARI MACHARIA.....6TH RESPONDENT

ROSELYNE WAGIKUYU MBOGO.....7TH RESPONDENT

JOAN NYOKABI MACHARIA.....8TH RESPONDENT

JOSEPHINE NYOKABI MACHARIA.....9TH RESPONDENT

JEMMIMAH WAKONYO MACHARIA.....10TH RESPONDENT

SAMUEL G. MWANGI.....11TH RESPONDENT

GATHEGE RUNG'ARE.....12TH RESPONDENT

NYOKABI JOSPHINE NJUGUNA.....13TH RESPONDENT

JOHN MACHARIA MURAYA.....14TH RESPONDENT

BENCET COMPANY LIMITED.....15TH RESPONDENT

RULING

BEATRICE WARINGA MURAYA, the applicant herein, took out the Summons dated 19th October 2010 pursuant to *rules 59 (1) and 73* of the Probate and Administration rules in which she sought for the following orders:

- (1) *That this application herein be certified urgent and be heard exparte in the first instance.*
- (2) *That the Respondent herein Richard Wachira Macharia and/or his servants, agents, assigns and/or anyone acting for him be restrained from entering land parcel L.R. NO. 3471/2 Mweiga and to cut trees and/or use the land in any way until the determination of the dispute on the said parcel of land.*
- (3) *That costs of this application be provided for.*

The Applicant swore an affidavit she filed in support of the application. **RICHARD WACHIRA MACHARIA**, the 2nd Objector/Respondent herein, filed a replying affidavit he filed to oppose the application.

The Applicant avers that she got registered as the proprietor of **L.R. NO. 3471/2 MWEIGA** on 6th May 2009. It is said that the aforesaid title was transmitted to her vide **NYERI H.C.SUCC CAUSE NO. 44 OF 1990**. Annexed to her affidavit is a copy of the certificate of confirmation of grant showing that the aforesaid land was amongst those properties transmitted to her. In the same annexure, it is shown that the Respondent was given **L.R. NO. 3471/1**. The Applicant has also annexed to her affidavit a copy of the title to land in dispute. The Applicant has alleged that the Respondent has leased the land in dispute to people she does not know without her consent. It is further alleged that the Respondent has begun cutting down trees standing on the suit land despite the fact he knows she has already acquired title to the land. The Respondent admitted that he had actually leased the suit land to third parties and that their leases will expire at the end of the year 2010. He claimed he was not aware that the Applicant alone had been given title to **L.R. NO. 3471/2**. He stated that he has taken up proceedings to challenge the Applicant's title. He claimed the land was transmitted to the Applicant on the basis of a rectified grant. It is the Respondent's contention that the rectification of grant was done surreptitiously.

I have carefully considered the rival submissions. It is not in dispute that title **NO. L.R. NO. 3471/2** has been transmitted to the Applicant. That title though disputed by the Respondent has not been challenged nor cancelled. The Applicant having acquired proprietary rights, must be allowed to enjoy those rights. The Respondent does not dispute that he has leased the land to third parties. He has not also denied that he has cut down trees standing on the suit land. The Respondent's actions amount to trespass on land. I find that the Applicant has established the allegations made on the Summons on a balance of probabilities. I allow the application with costs to the Applicant.

Dated and delivered at Nyeri this 18th day of February 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Wachira holding brief Mukunya for Applicant. Respondent in person present.