



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 20 OF 2004

**IN THE MATTER OF THE ESTATE OF SAMUEL MERU GICHUHI alias SAMUEL MERU
GICHUHI – (DECEASED)**

BETH NYAMBURA

MERU.....APPLICANT

VERSUS

**HARRISON MAINA MERU.....PETITIONER/
RESPONDENT**

RULING

BETH NYAMBURA MERU, the applicant herein, took out Summons dated 30th October 2009, whereupon she prayed to be given the following orders:

- (1) That this application be certified as urgent and be heard ex-parte in the first instance.**
- (2) That an interim injunction do issue to restrain the petitioner/respondent HARRISON MAINA MERU from disposing off, alienating, transferring, dealing and/or in any other way interfering with the following properties pending hearing and determination of this application.**

PROPERTIES

- 1. CHANIA/MATAARA/1398**

2. **CHANIA/MATAARA/775**
3. **CHANIA/MATAARA/834**

4. **NYANDARUA/OLKALOU CENTRAL – 0.607HEC**
5. **HANIA/MATAARA/1406**

6. **SOSSIAN/SOSSIAN BLOCK 1/14022 (MIFUGO)**

7. **SOSSIAN/SOSSIAN BLOCK 1/13499 (MIFUGO)**
8. **SOSSIAN/SOSSIAN BLOCK 1/16732 (MIFUGO)**
9. **LONGONOT KIJABE BLOCK 2/5915 (UTHERI WA LARI)**

10. **CHANIA/NGORONGO/T 290 APP-023 AC**
11. **KIMUNYE INVESTMENT PLOT – NO. 210-161**

12. **KIMUNYE INVESTMENT PLOT NO. 789**
13. **NATIONAL BANK SHARES – 400**

14. **KENYA AIRWAYS SHARES – 500**
15. **THE CO-OPERATIVE BANK SHARES – 50**

16. **KENYA BREWERIES SHARES – 565 CERTIFICATE NO. 00340288**
17. **KENYA COMMERCIAL BANK SHARES – 200 CERTIFICATE NO. 349823**

18. **I.C.D.C. INVESTMENT CO. LTD SHARES – 632**

19. **MWANA MUKIA HOUSING CO-OPERATIVE SOCIETY SHARES**
20. **UTHERI WA LARI – SUWA SHARES**

21. ***MWANA MWIRERI – RIRONI SHARES***
22. ***GATUNDU MIXED SHARES***
23. ***MWANA WIKIYO SHARES***
24. ***MATAARA TEA FACTORY COMPANY SHARES***
25. ***GACHEGE TEA FACTORY COMPANY SHARE***
26. ***KIAMBU TEA GROWERS SACCO SHARES***
27. ***BANK SHARES OF KIAMBU TEA GROWERS BANK***
28. ***EQUITY BANK SHARES***
29. ***GITANGWANYI SHARES***

(3) THAT an interim injunction do issue to restrain the petitioner/respondent HARRISON MAINA MERU from disposing off, alienating, transferring, dealing and/or in any other way interfering with the properties listed under order 2 above pending the hearing and determination of the petition summons for revocation and annulment of grant.

(4) THAT this Court do recall the grant of probate and certificate of confirmation of grant issued to HARRISON MAINA MERU.

(5) THAT costs be in borne by the petitioner/Respondent.

The Applicant swore an affidavit she filed in support of the application. **HARRISON MAINA MERU** opposed the summons by filing a replying affidavit he swore on 11th January 2010.

When the application came up for interpartes hearing, Mr. Muthoni, learned advocate, argued the application on behalf of the Applicant. The Applicant sought for injunctive orders to restrain the Respondent from disposing of, alienating and or transferring the assets transmitted to him vide the certificate of confirmation of grant pending the hearing and determination of the Applicant's summons for revocation and or Annulment of Grant. She claimed that unless the orders are given she will suffer irreparable loss and that her Summons for revocation and or annulment of Grant will be rendered nugatory. The Respondent opposed the application arguing that the grant having been confirmed cannot be halted by an order of injunction. The Respondent averred that the property have already been transmitted to him hence the Applicant ought to have filed a separate suit to recover the same instead of coming back through the same succession cause. The Respondent alleged that the Applicant has not come to Court with clean hands hence she should not benefit from equity. The respondent further argued that the Applicant did not specify the properties he is alleged he is about to dispose of. Mr. Kiminda, learned advocate for the Respondent was of the view that the application for injunction under *Order XXXIX* of the

Civil Procedure Rules is not applicable to these proceedings under *rule 63* of the probate and Administration Rules. Mr. Gathii, learned advocate for Pius Njuguna Mwaura, one of the persons who purchased one of the properties from the Respondent, opposed the Applicant's application claiming his client's title is protected under *Section 93* of the Law of Succession Act.

I have considered the grounds set out on the face of the Summons plus the facts deponed in the affidavits filed for and against the Summons. I have further taken into account the oral submissions of learned counsels participating in these proceedings. There is no dispute that Harrison Maina Meru, the respondent herein, was issued with the Letters of Administration intestate in respect of the Estate of Samuel Meru Gachuhi alias Samuel Meru Gicuhi, deceased. The aforesaid grant was confirmed on 26th March 2007. Beatrice Nyambura Meru, the applicant herein, has filed a Summons for Revocation of Grant dated 30th October 2009. In the aforesaid application, she seeks for the grant issued to the Respondent to be revoked and or annulled on the grounds *inter alia* that the Respondent obtained the same fraudulently and by concealing material information from Court. The aforesaid application is yet to be heard. The Applicant is now before this Court seeking for injunctive orders to restrain the Respondent from further disposing of the properties to third parties pending the hearing of the Summons for Revocation of Grant. The Respondent has raised a preliminary point against the application. The basis of the objection is that the provisions of *Order XXXIX* or the Civil Procedure are inapplicable to these proceedings and that the Applicant should have sought for stay of execution instead. With respect, I do not think that is the correct exposition of the law in these proceedings. The application clearly stated that it is premised under *rules 59(5)* and *73* of the Probate and Administration Rules. The Applicant has not cited the provisions of *Order XXXIX* (now *Order 40*) of the Civil Procedure Rules. In any case this Court can issue the orders sought by the applicant in exercise of its inherent power under *Section 47* of the Law of Succession Act and under *rule 73* of the Probate and Administration Rules. It is the Respondent's submission that the Applicant should have filed a separate suit to recover the properties already transmitted to him and to apply for an order of stay in respect of those properties not yet transmitted to him. Again, I do not think the Applicant can be faulted in filing the current application. She has simply asked for orders to restrain the Respondent from disposing of the properties which have been transmitted to him. The Applicant has sought to revoke and or annul the grant. The Applicant did not need to file a separate suit in the circumstances nor an order for stay.

Having disposed of the Respondent's preliminary point of law, let me now determine the merits of the application. What the Applicant seeks is for an order restraining the Respondent from disposing of, alienating and or transferring the properties transmitted to him vide the certificate of confirmation of grant pending the hearing and determination of the application for revocation and annulment of grant. Mr. Gathii, learned advocate for a Mr. Pius Njuguna Mwaura has indicated to this Court that his client has purchased some of the properties from the Respondent. Of course Mr. Gathii's client's interest is protected under *Section 93* of the Law of Succession Act. Mr. Gathii has not stated to this Court which of those properties has been sold to his client. In any case there are no orders sought by the Applicant against his client hence his objection is without merit. If well advised there are remedies available for his client if and when necessary which can be obtained. In fact, the submissions of Mr. Gathii, lends credence to the Applicant's submission that the Applicant should be restrained from disposing of, transferring and or alienating the properties listed. If the order is not given, I am convinced the Applicant will suffer irreparable loss in that the properties may be transferred to third parties hence putting the same out of the reach of the Applicant since third parties proprietary interest are protected under *Section 93* of the Law of Succession Act. If the orders sought are denied, the Applicant's application for revocation and or annulment of grant dated 30th October 2009 will be rendered useless. I am satisfied the Applicant is entitled to the orders sought save that at this stage the prayer to recall the certificate of confirmation of grant cannot be given because the same is the subject matter of the application for revocation and annulment of grant.

In the end I allow the Summons dated 30th October 2010 in terms of prayers 2 and 3 with costs abiding the outcome of the Summons for Revocation and or Annulment of Grant.

Dated and delivered at Nyeri this 11th day of February 2011.

J. K. SERGON

JUDGE

In open court in the presence of Nguring'a holding brief Mwaniki Muthoni and Mr. Gitibi holding brief Kiminda for respondent and Kingori for Interested Party.