



REPUBLIC OF KENYA
HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NO. 65 OF 2009

GILGIL DISTRIBUTORS LIMITED.....PLAINTIFF

VERSUS

GRACE RWAMBA NJERU.....1ST PLAINTIFF

**VIRGINIA NJERI AND ESTHER WANJA (Sued as the administrators of the Estate of the late
JOHN MAINA KAMANGARA).....2ND
DEFENDANT**

RULING

On 11th November 2009, Justice Maraga, moving *Suo Motto* ordered that **Mr. Matiri**, Counsel for the Plaintiff, do hold the original of grant registered as Number **I.R. 69960/1** until this suit is heard and determined or until the further orders of this Court. Mr. Matiri has filed the application dated 30th March 2011, seeking an order that this Court be pleased to review, vacate, discharge or set aside the orders made by Justice Maraga. The reasons for the application are that the documents are urgently required to form part of the plaintiff's evidence and to prepare a list of documents. He also deponed that the continued holding of the document may draw his firm into an arena of litigation. Lastly, counsel said that it has become increasingly expensive for the plaintiff's advocate to keep the said documents in safe custody. He had filed an affidavit in support.

The application was opposed by **Mr. Kimatta**, Counsel for the 1st defendant, who swore an affidavit dated 5th April 2011. Counsel reads mischief in the application by Mr. Matiri. He deponed that before the Judge made the said order, he had put into consideration the issues raised in the suit and therefore the need to preserve the title. He said the plaintiff did not require the physical possession of the title in order to prepare its list of documents and in any event since this matter had been pending since the 2009. The same should have been prepared and filed.

Having considered the above submissions, it is not in dispute that the title document is at the core of this dispute with two parties claiming to have bought the land and therefore the need for title to be securely preserved. I do not understand how Mr Matiri is likely to be drawn into the arena of the dispute, if he is only complying with an Order of this Court, to keep the title in safe custody. This matter has been pending since 2009, and it is not understandable why the list of documents has not been drawn to date. In

any event, Counsel does not need the documents in order to file the list. This matter is still pending and it is my view that the title should be kept in safe custody and if Mr Matiri finds it too expensive to keep it, then I direct the same be brought into custody of the Court, to be kept under lock and key and produced as and when required until this matter is heard and determined. It is so ordered.

Cost be in the cause.

DATED AND DELIVERED THIS 20TH DAY OF MAY 2011.

R P V WENDOH

JUDGE

PRESENT

Mr. Matiri Applicant: present

Ms Litunda holding brief for Kimetta

Court Clerk: Kennedy Oguma