



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. 434 OF 2008**

**IN THE MATTER OF THE ESTATE OF  
GEORGE GITHAIGA MURIMI.....DECEASED  
AND  
SAMUEL MURIMI NYAGA.....APPLICANT  
Versus  
PHYLLIS WANJIRU KAMAU.....RESPONDENT**

**RULING**

Pursuant to the provisions of sections 47 and 76 of the Law of Succession Act and rules 44 and 73 of the Probate and Administration rules, Samuel Murimi Nyaga, the Applicant herein, took out the summons dated 7<sup>th</sup> October 2010 in which he applied for Wilson Ugi Wanyoike and Mbuvi Kenneth to be enjoined as the Co-Respondent of Phyllis Wanjiru Kamau, The Respondent herein. The applicant swore an affidavit in support of the application. The Respondent on her part filed a replying affidavit to oppose the summons.

I have considered the grounds set out on the face of the summons and the facts deponed in the affidavits filed for and against the application. I have further considered the oral submissions tendered by learned counsels from both sides. It is the submission of Miss Mbichile, learned advocate for the applicant that the applicant seeks to have the two intended respondents to be enjoined to this proceedings as such so that they will be able to answer to the summons for revocation of grant which may affect the titles they possess. It is alleged that the intended respondents had purchased land from the estate of George Githaiga. In her replying affidavit, the respondent admitted that upon obtaining a grant she sold the only assets of the estate i.e. L.R. no. Aguthi/Gathaithi/909 and motor vehicle registration no. KAZ 871C to the intended co-respondents. She urged this court not to grant the orders because the intended co-respondents, proprietary interest in respect of those assets are protected under section 93 of the law of Succession Act. The applicant was of the view that section 93 was meant to protect actual fraud hence the intended co-respondents' proprietary interest can be challenged.

I have carefully considered the material placed before this court plus the rival oral submissions by learned counsels. I think the question to be determined in the end is whether or not the intended co-respondents acquired rights are protected under S. 93 of the Law of Succession Act? That issue can only be determined upon hearing the parties to the dispute plus those whose rights are likely to be affected by the decision of this court. I am of the firm view that the summons should be allowed so that the matter can be finally resolved. I allow the summons dated 7<sup>th</sup> October 2010 as prayed with costs abiding the outcome of the summons for revocation and annulment of granted dated 20<sup>th</sup> May 2010.

Dated and delivered this 29<sup>th</sup> day of July 2011.

J.K. SERGON  
JUDGE

In open court in the presence of Mr. Kimunya holding brief for the Petitioner. No appearance Wanyoike for the Applicant.