



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 348 OF 2011

**IN THE MATTER OF THE ESTATE OF
KINYUA GICHOHIDECEASED
AND**

**GEORGE GICHOHI KINYUA
JOSPHAT NGUCHIA KINYUA.....APPLICANT**

VERSUS

NANCY WANGECHI WANGUHU.....RESPONDENT

RULING

This ruling is the outcome of the summons dated 12th May 2011 in which Josphat Nguchia Kinyua, the 2nd Applicant herein has sought for the following orders:

- 1. That the Respondent herein, her servants, agents and/or families be restrained from entering and/or interfering with the land parcel Nos. KIINE/KIANGAI/483, IRIAINI/GATUNDU/468 and Plot no. IRIAINI/GATUNDU/425/5 with the intention of sub dividing or doing destruction of anything else during the pendency of the above case.***
- 2. That the Land Registrars in Kirinyaga and Nyeri be restrained from registering any documents in respect of the above lands during the pendency of this case.***
- 3. The cost of this application e provided for.***

The summons is supported by the affidavit of Josphat Nguchia Kinyua. Nancy Wangechi Wanguhu, the Respondent herein, and George Gichohi Kinyua each opposed the summons by filing a replying affidavit they swore on 2nd June 2011 and 6th June 2011 respectively.

The applicant alleged that the Respondent came to subdivide L.R. no. Kiine/Kiangai/483 on 11th May 2011 without his consent. He alleged that he protested to confirmation of the grant vide Karatina S.R.M.C. SUCC. Cause no. 20 of 2007 but his protest was dismissed.

The Respondent opposed the summons claiming that the same is without any shred of merit. She pointed out that the applicant and the respondent were both in the succession cause in respect of the estate of Kinyua Gichohi, deceased before the Karatina S.R.M.'s court. It is said the applicant was unhappy with the mode of distribution decreed by the Karatina S.R.M'.s court thus he preferred an appeal before this court vide Nyeri H.C.C.A. 20 of 2007. The appeal was heard and dismissed by the honourable Lady Justice Kasango in her judgment delivered on 18th July 2008.

I have perused the copy of the judgment of Lady Justice Kasango and it is clear that the following

assets of the estate were distributed as follows:

- (i) **L.R. no. Kiini/Kiangai/483:**
Medi Njoki Kinyua
Nancy Wangechi Wanguhu - 1.358 acres.
Josphat Nguchia Kinyua - 1.358 acres.
- (ii) **L.R. no. Iriaini/Gatundu/469:**
Medi Njoki Kinyua
Nancy Wangechi Wanguhu 1.456 acres.
Josphat Nguchia Kinyua - 1.456 acres.
- (iii) **L.R. no. Iriaini/Gatundu/425/5**
Medi Njoki Kinyua
- (iv) **Shares with Barclays Bank (k) Ltd.**
Medi Njoki Kinyua.

There is no doubt that the parcels of land must be subdivided to complete the administration of the estate. Instead of filing an appeal against this court's judgment, the applicant has instead filed a summons for revocation of grant. It is the submission of the Applicant that the grant has become useless and inoperative because of the death of Medi Njoki Kinyua. It is alleged she died on 1st February 2011. There is clear evidence that the administration of the estate is complete. The suit premises have been subdivided and transmitted to the respective beneficiaries hence it is not true that the grant has become useless and inoperative.

In the end I see no merit in the summons. The same is dismissed with costs to the Respondent.

Dated and delivered this 29th day of July 2011

J.K. SERGON
JUDGE.

In open court in the presence of Miss Mwai holding brief Muthigani for the Respondent. No appearance for the Applicant