



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**SUCCESSION CAUSE NO. 23 OF 2009**

*In the matter of the Estate of Festus Mugushu alias Festus H.N. Mugushu – ( Deceased)*

**AND**

**PATRICIA GITIRI MUGUSHU ..... ADMINISTRATOR/APPLICANT**

**VERSUS**

**DICKSON MURIUKI KARIGI.....RESPONDENT**

**R U L I N G**

The deceased Festus H.N. Mugushu died intestate on 2<sup>nd</sup> March 2008 leaving a parcel of land MBETI/GACHURIRI/346. His widow the (Applicant) successfully petitioned for Letters of Administration which were confirmed. It was ordered that the land parcel be registered in the names of the Applicant and her children. The Applicant is unable to effect the registration because the land has been cautioned by the Respondent.

The Respondent had in CMCC No. 260 of 2008 at Embu sued the deceased claiming this land which he said he had bought from him. The Respondent had alternatively sought a refund of the purchase price together with interest at the rate of 50% per year. The suit was dismissed with costs. The Respondent has appealed to the High Court but has no order barring the use or disposal of the land. His argument is that if the present application is allowed he will lose the land and yet he has a good appeal.

It is not for this court to estimate the chances that the appeal will have. It is, however, important to point out that the Respondent did not claim a purchaser's interest to the land in this Succession proceedings. It is also material that the Respondent had an alternative prayer for the refund of the purchase price. If he loses the land he could still claim the purchase price.

In short, the application has merit and it is allowed with costs.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 28<sup>TH</sup> DAY OF JULY 2011.**

**A.O. MUCHELULE  
JUDGE**