



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL SUIT NO. 68 OF 2011**

**ALICE MIIRU KOBUTHI Suing as the Administrator of the Estate of  
KOBUTHI MAINGI (Deceased) .....PLAINTIFF/APPLICANT**

**VERSUS**

**FRANCIS GIKUNDI MARETE.....DEFENDANT**

**R U L I N G**

The Plaintiff is the legal administrator of the estate of the deceased Kobuthi Maingi who was her husband. She is claiming that the deceased had bought the suit land, that is GATURI/NEBURE/708, from its then registered owner Mungania Kagundu alias Kiura Kagundu following agreement dated 20<sup>th</sup> April 1966. From 1967, the deceased and his family begun living on the land. When Kagundu died, the Defendant filed *Runyenjes SRM Succession Cause No. 92 of 2010*, claiming to be the step son, and inherited the suit land which is now registered in his name. The Plaintiff alleges that the Defendant was not the step son of Kagundu and neither did he make her aware of the succession case and yet she was living on this land. She alleges fraud against him and in this suit seeks a declaration that the registration of the suit land in the name of the Defendant be found to be null and void. She seeks that the registration be cancelled and that she be registered as the owner.

In this application, the Plaintiff seeks under Section 3A of the Civil Procedure Act a prohibitory order against the title to the suit land until this case is heard and finalized. The Defendant opposed the application saying that he inherited the suit land from Kagundu who was his uncle; that the Plaintiff was at liberty to file application to revoke the grant which she had not done; and that, the purported sale agreement was null and void for lack of the consent of the Land Control Board.

The Plaintiff is basically aggrieved by the fact that she was not made aware of the succession cause to be able to protect her interest in the suit land, and further claims that the Defendant was not the step son of the late Kagundu and therefore ought not to have inherited him. Such a complaint brings her within the provisions of Section 76 of the Law of Succession Act (Cap 160) under which any grant, whether confirmed or not, may at any time be revoked or annulled if it was obtained fraudulently by the making of false statement or by the concealment of any material evidence. It would, consequently, appear that the suit is incompetent as the law provides an appropriate mechanism by which the Plaintiff can pursue her claim to the land against the Defendant. In the premises, the application cannot be granted as it is legally not tenable. It is therefore dismissed with costs.

DATED, DELIVERED AND SIGNED AT EMBU THIS 18<sup>TH</sup> DAY OF JULY 2011.

**A. O. MUCHELULE  
JUDGE**