

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 68 OF 1988

IN THE MATTER OF THE ESTATE OF SOLOMON NGARI – DECEASED

PETER GICHURU NGARE.....APPLICANT

VERSUS

WILLIAM NGATIA NGARE.....RESPONDENT

RULING

Peter Gichuru Ngari, the Applicant herein, is before this Court, seeking to have the orders given on 11th February 2011 to be set aside by review and to be substituted with an order maintaining the status quo in respect of **L.R. NO. RUGURU/KARUTHI/418** pending the hearing and determination of the cause vide the Summons General dated 18th February 2011. The Summons is supported by the affidavit of the Applicant. William Ngatia Ngare, filed a replying affidavit to oppose the Summons.

The Applicant avers that the Respondent had applied to have the Applicant restrained from utilizing 3.1 acres of **L.R. NO. RUGURU/KARUTHI/418**. It is said that there were averments in the Respondent's affidavit that the Applicant was exclusively utilizing the land in dispute and that there was no evidence from one Ronald Kariuki that he was entitled to share the land with the Applicant. The Applicant fears that the said Ronald Kariuki may try to interfere with the status quo by entering the land. The applicant is of the opinion that this is an error apparent on the face of record. The Respondent urged this court to dismiss the summons on the basis that there are no new matters material to this case to warrant the order for review. The respondent claimed that the Applicant does not intend to respect the court order of 11th February 2011 by purporting to circumvent the same using this summons.

Having considered the material placed before me plus the rival submissions, it is obvious that the applicant is not happy with this Court's order of 11th February 2011 where he was restrained from utilizing 3.1 acres in **L.R. NO. RUGURU/KARUTHI/418** pending hearing and determination of this cause. In an application for review, the Applicant is bound to show the new matter which was not within the knowledge of the Applicant after due diligence at the time of making the decision. I have carefully looked at the ruling and I am convinced there is no error apparent on record. If the Applicant was dissatisfied with the ruling of 11th February 2011, he can as well appeal instead of engaging this Court with an application for review. This Court directed the parties to expedite the hearing of the summons for confirmation and the protest to put to an end the persistent wrangles.

In the end, the Motion is dismissed with costs to the Respondent for lack of merit.

Dated and delivered at Nyeri this 21st day of October 2011.

J. K. SERGON
JUDGE

In open Court in the presence of Mr. Kamwenji for the Petitioner, Kimunya holding brief Mwai for the 2nd Respondent and Wachira for the Applicant.

