



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL CASE NO. 154 OF 2010**

**HANNAH MURINGI MUNENE.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**  
**VIRGINIA WANGUI.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**SOLOMON GICHUKI KARINGA.....3<sup>RD</sup> RESPONDENT/DEFENDANT**

**AND**

**DAVID KIHARA KIRERI.....APPLICANT**

**RULING**

Pursuant to the provisions of *Section 80* of the Civil Procedure Act, **David Kihara Kireri**, the applicant herein, applied for inter alia: the decree dated 24<sup>th</sup> February 2011 and issued on 15<sup>th</sup> March 2011 to be set aside and or vacated by way of review. The Motion is buttressed by the affidavit of applicant. **Hannah Muringi Munene** and **Virginia Wangui**, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs herein, opposed the Motion by relying on grounds of opposition.

It is the submission of the Applicant that on 24<sup>th</sup> February 2011 a decree was issued directing the subdivision and sharing of **L.R. NO. MAHIGA/KIHOME/1194** among the Plaintiffs and the Defendant. He stated that he was not a party to this suit hence he could be heard. He has urged this Court to grant his orders so that he can be heard before being condemned. The Applicant alleged that he is a decree holder against Solomon Gichuki Karinga the 3<sup>rd</sup> respondent/Defendant herein and that the suit land is the subject of attachment in **Nyeri C.M.C.C. No. 72 of 2005**. It is alleged the attachment took place before this suit was filed. It is curious to note that neither the Plaintiffs nor the Defendant filed any affidavit to controvert the Applicant's averments. The Plaintiffs merely filed grounds of opposition which was to the effect that since the Applicant is not a party to the suit then he has no *locus standi* to file the Motion. I think it is convenient at this stage to determine the preliminary issue before considering the merits of the Motion. A careful reading of the provisions of *Section 80* of the Civil Procedure Act will reveal that the law allowed any person aggrieved by a decision to apply for the review of the same. In short, it is not a must for an applicant to be a party to a suit in order to make an application for review. The only condition to be met is that one must be an aggrieved party. In the case before me the Applicant is saying that the order made on 24<sup>th</sup> February 2011 affects his rights as a decree-holder who has or intends to attach **L.R. NO. MAHIGA/KIHOME/1194**. I am satisfied that the Applicant's Motion is properly before this Court. It is not in dispute that the aforesaid parcel of land was attached vide **Nyeri C.M.C.C. No. 72 of 2005 David Kihara Kireri =Vs= Solomon Gichuki Karinga** by the order issued on 25<sup>th</sup> November 2010. The order directed the aforesaid land to be sold and its proceeds be used to settle

the debt owed to the Applicant herein. By the Plaint dated 9<sup>th</sup> November 2010, the Plaintiffs herein prayed for judgment against the Defendant in the following terms:

- (a) An order that Two(2) acres out of Mahiga/Kihome/1194 are held by the Defendant in trust for the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff each to get one(1) acre and dissolution of the trust and subsequent transfer to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff.*
- (b) Costs of this suit with interest at court rates.*
- (c) Such further or other relief as this Honourable court may deem fit to grant.*

The Defendant entered appearance on 21<sup>st</sup> December 2010. By a consent order duly executed by the Plaintiffs and the Defendant dated 8<sup>th</sup> February 2011, the suit was compromised as follows:

- (a) **L.R. NO. MAHIGA/KIHOME/1194** be subdivided into three portions i.e. two portions of 1 acre each and one portion of ½ an acre.
- (b) The Plaintiffs were to get each a portion measuring 1 acres.
- (c) The ½ an acre was to go to the Defendant.

The consent order was adopted as the order of this Court on 24<sup>th</sup> February 2011. It is important to note at this stage that the Defendant herein did not disclose to the Court that the land in dispute had been attached by the Applicant vide Nyeri C.M.C.C.C. No. 72 of 2005. This Court can only infer that the Defendant wanted to defeat the execution of the Nyeri Chief Magistrate's Court. That in my view puts the Defendant in bad light in that he wanted to steal a match from the applicant. Basically the consent order would have rendered the Applicant's attachment of **L.R. NO. MAHIGA/KIHOME/1194** useless. In fact by the time of recording the consent order, a prohibitory order had been registered against the title by the Applicant. The Plaintiffs herein had even filed objection proceedings to resist the attachment. It was therefore not right for them to record a consent order to circumvent the lawful process of attachment. The consent order is equivalent to an agreement. The agreement was reached fraudulently with the sole intention of defeating the Applicant's decree. The same must be reviewed and set aside. In the end the Motion dated 10<sup>th</sup> June 2011 is allowed as prayed with costs of the Motion being paid by the Plaintiffs and the Defendant severally and jointly.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of November 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Macharia for the Applicant and Mr. Kingori for the Respondent.