

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 45 OF 2011

KINGORI KAHANGI.....PLAINTIFF

VERSUS

SAMUEL KARIUKI KINGORI.....1ST DEFENDANT
JOHANA NDIRANGU GITHU.....2ND DEFENDANT

RULING

This ruling is the outcome of the Summons dated 29th April 2011, in which Kingori Kahangi, the Plaintiff herein has sought for the issuance of a prohibitory order to prohibit any dealings on **L.R. NO OTHAYA/THUTI/200** pending the hearing and determination of this suit. The Summons is supported by the affidavit of the Plaintiff. Samuel Kariuki Kingori and Johana Ndirangu Githu, the 1st and 2nd Defendants each filed a replying affidavit to oppose the summons. When the Summons came up for interpartes hearing, learned counsels recorded a consent order to rely on the averments contained in the affidavits filed for and against the Summons.

I have considered the grounds set out on the face of the summons plus the facts deponed in the affidavits filed for and against the application. It is the submission of the Applicant that he has a legitimate interest over **L.R. NO. OTHAYA/THUTI/200** which the Defendants have failed to take into account when obtaining the grant of letters of administration in respect of Estate of Muturi Waweru alias Ngahu Kamwenji, deceased. The applicant avers that he has now filed an application for annulment of grant which facilitated the transmission of **L.R. NO. OTHAYA/THUTI/200** to the 1st Defendant/Respondent and then to the 2nd Respondent. It is argued that the 2nd Defendant/Respondent may transfer the suit land to innocent third parties before the Summons is heard and determined. The 1st Defendant/respondents opposed the application claiming the Applicant was a mere care-taker of the suit property on behalf of his maternal uncle. He claimed he did his own investigation to ascertain the true owner of the land before purchasing it from the 2nd Defendant. He claimed he was an innocent purchaser for value without notice. The 2nd respondent on his part urged this court to dismiss the summons. He claimed he properly succeeded the deceased and that he ranked in priority as opposed to the Plaintiff.

The substantive suit is expressed in the plaint dated 23rd March 2011. In the aforesaid Plaint, the Plaintiff intends to have the process used by the 1st and 2nd Defendants to acquire **L.R. NO. OTHAYA/THUTI/200** to be declared to be fraudulent, null and void *ab initio*. The Defendants have averred that the process they used to acquire the aforesaid property was clean. In my view the issues raised in the suit and in the application appear to be weighty and can only be determined in a trial. In my view I am satisfied that the Plaintiff has shown a prima facie case with trial issues. The purpose of registering a prohibitory order under *Section 128* of the registered Land Act is to prevent further dealings in the suit land until the issue in dispute is resolved. The order is meant to preserve the suit property pending the hearing and determination of the suit. The 1st Defendant avers that he had no intention of disposing of the land. In my view and in the circumstances of this case, I see no prejudice the Defendants will suffer if the order is given. It is in the best interest of justice that the order should be given. I allow the summons dated 29th April 2011 as prayed save that costs shall abide the outcome of this suit.

Dated and delivered at Nyeri this 18th day of November 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. K. Wachira for Defendant/Respondent and Mr. Ndirangu for Plaintiff.