



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

P & A APPEAL NO. 1 OF 2006

In the matter of the Estate of Mwangi Kiriiri (Deceased)

ZACHARIA KAMAU MWANGI.....APPELLANT

VERSUS

HANNAH NJERI MWANGI.....1ST RESPONDENT

VIRGINIA WANGUI MWANGI.....2ND RESPONDENT

MIRIAM NJOKI MWANGI.....3RD RESPONDENT

(Being appeal from the judgment of Lucy Nyambura, Senior Resident Magistrate in Kigumo Resident Magistrate's Succession Cause No. 59 of 2003 delivered on 16th May 2006)

RULING

The subject matter of this ruling is the Summons dated 20th June 2011 in which Hannah Njeri Mwangi, the 1st respondent herein, seeks for the following orders:

- (a) That this application be certified as urgent and be heard ex-parte.***
- (b) That the Appellant, Mr. Zakaria Kamau Mwangi his servant's and agents and particularly the private surveyors who had been used by Appellant to change and carrying out subdivision in the suit land be restrained from selling the parcel of land No. Loc. 2/Kangari/4250 for three sisters as it is indicated in the Decree paragraph (D) in respect of land parcel No. Loc. 2/Kangari/259 until the final determination of this Application.***
- (c) The Honourable court be pleased to issue an order authorizing and empowering the court by itself on its executive officer to sign all documents as may be required to be signed by the Appellant to facilitate the execution of the court judgment in relation to land parcel No. Loc. 2/Kangari/4250;***
- (d) The honourable court be pleased to order provision of security by the O.C.S. Kigumo Police Station on the day appointed for sub-division.***
- (e) Cost of this Application be provided for.***

The aforesaid Summons is supported by a joint affidavit of Hannah Wangui Mwangi, Virginia Wangui Mwangi and Miriam Njoki Mwangi, the 1st, 2nd and – 3rd respondents respectively. Zakariah Kamau Mwangi, the Appellant herein, filed a replying affidavit to resist the application. The replying affidavit

prompted the respondents to file two further affidavits in response.

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. Prayer (b) of the Summons was to last until the ruling is delivered hence this ruling only relates to prayers (c), (d) and (e). In prayer (c), the Respondents have asked this Court to issue an order authorizing the executive officer to execute relevant documents in place of the Appellant to facilitate the execution of the agreement in relation to **L.R. NO. LOC. 2/KANGARI/4250**. the trio also applied for an order to direct the O.C.S., Kigumo Police Station to provide security during the subdivision. The Respondents complained that the Appellant had transferred the land to his name and that title was closed upon subdivision giving rise to **LOC. 2/KANGARI/4368 – 75** without their consent. The trio annexed the certificates of official searches to their affidavit. They alleged that the Appellant now wants to dispose of the land to third parties in an attempt to further his fraudulent activities. In his reply, the Appellant attacked the competency of the summons. He claimed that before their mother, i.e. Martha Waitherero Mwangi, died on 25th May 2011, the Court vide Kigumo **S.R.M. C.C. NO. 179 of 2009**, had issued a decree directing the deceased to transfer 0.42 Ha to him to be excised from **LOC.2/Kangari/4250**. The Appellant further pointed out that the 1st respondent had further participated in the aforesaid proceedings. He stated that balance of the land is still in the name of the deceased. It is apparent from the record that the Respondents have not controverted the allegation by the Appellant that he had been awarded 0.42 Ha to be excised from **LOC.2/KANGARI/4250**. From the decree annexed to the replying affidavit of the Appellant it is also clear that 1.0 H.a was to remain in the name of Martha Waitherero Mwangi. The official search annexed to the joint affidavit of the respondent shows that **LOC.2/KANGARI/4250** measures approximately 1.434 Ha. It is not in dispute that Zakaria Kamau Mwangi and Hannah Njeri were appointed as joint administrators of the Estate of Mwangi Kiriiri, deceased on 16th May 2006. The grant was confirmed on 13th June 2006. Martha Waitherero, Hannah Njeri Mwangi, Virginia Wangui Mwangi and Zakariah Kamau Mwangi, were each given 1.33 acres to be excised from **LOC.2/KANGARI/2591** before the Kigumo S.R.M. Court vide **Kigumo Succession Cause No. 59 of 2003**. An appeal to this Court was preferred. Lady Justice Kasango heard the appeal and in the end she revised the learned Magistrate's decision. In her decision delivered on 18th December 2008, the learned Judge made the following orders in distributing **LOC. 2/KANGARI/2591**.

1. Zakariah Kamau Mwangi - 2 acres.
2. Milka Muthoni Muturi - 2 acres.
3. Agnes Njeri Kamau - 0.1 acres.

4. Martha Waitherero - remainder of the land as life interest and thereafter to Hannah Njeri Mwangi, Virginia Wangui Mwangi and Miriam Njoki Mwangi. Though it is not clear from the record, it would appear **LOC. 2/KANGARI/2591** was finally subdivided into few subdivisions. The remainder of the land due to the late Martha Waitherero Mwangi became subdivision No. **LO.C. 2/KANGARI/4250**. I have already stated that the land measured 1.434 Ha. The Respondents aver that the Appellant has caused the aforesaid land to be subdivided into **LOC. 2/KANGARI/4317** and **LOC.2/Kangari/4318**. It is alleged that as a result of the aforesaid subdivisions **LOC.2/Kangari/4250** was closed. It is clear from the record that **LOC. 2/Kangari/4250** was registered in the name of Zakariah Kamau Mwangi as of 19th November 2009. As of 27th August 2009, the aforesaid parcel was in the names of the Respondents. It is puzzling how the land changed hands from the Respondents to the Appellant. I think it is apparent that the transactions by the Appellant herein in respect of the parcel of land known as **LOC. 2/KANGARI/4250** is suspect. He has not explained whether **LOC.2/KANGARI/2591** was subdivided according to the judgment of Lady Justice Kasango. The Appellant has shown this Court a decree issued by Kigumo S.R.M.'s Court directing **LOC. 2/KANGARI/4250** to be subdivided into two subdivisions. One measuring 0.42 Ha to be given to the Appellant and 1.0 Ha to be given to the late Martha Waitherero Mwangi. The pertinent question is whether the Appellant was right to file a suit to recover land which the late Martha Waitherero had life interest. She was in essence holding the land for her own benefit during her life time and thereafter the same was expected to automatically go to the Respondents. I do not think the decree issued vide **Kigumo S.R.M.C.C. No. 179 of 2009** would have been executed without the

participation of the Respondents. In the circumstances of this case, I think this Court must step in under *Section 47* of the Law of Succession to correct the ills done by the Appellant. I direct that all transactions carried out by the Appellant in respect of **LOC. 2/KANGARI/4250** to be cancelled. The title is restored and should therefore be transmitted to the three Respondents in compliance with the decision of Lady Justice Kasango delivered on 18th December 2008. Costs of the application to be met by the Appellant.

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

J. K. SERGON
JUDGE

In open court in the presence of the parties.