



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

**Succession Cause 110 of 1998**

**IN THE MATTER OF THE ESTATE OF M'RINTARI M'RIRIA (DECEASED)**

**PAUL MUTHURI M'RINTARI .....PETITIONER  
VERSUS  
STEPHEN MUCHAI.....1<sup>ST</sup> OBJECTOR  
ANITA MAKANDI.....2<sup>ND</sup> OBJECTOR**

**JUDGMENT**

This has been a long drawn out dispute. The background is that there are 3 brothers.

- (i) M'Ringera M'Riria deceased who was the father of Stephen Muchai Ringera.
- (ii) M'Mwithimbu M'Riria deceased who was the father of John Kiamana M'Mwithimbu deceased and the said John Kiamana was the husband of Anita Makandi Kiamana.
- (iii) M'Rintari M'Riria deceased was the father of Paul Muthuri M'Rintari

The object of the dispute between Anita, Stephen and Paul is the estate of M'Rintari M'Riria deceased which comprised of parcel number *Ntima/igoki/1283* now subdivided into 3 portions *Ntima/Igoki/6022, 6023 and 6024*. Paul filed this petition on 2<sup>nd</sup> June 1998. He did not obtain consent nor did he cite Anita and Stephen even though they were in occupation of deceased property. The grant although filed on a high court file was confirmed by the deputy registrar on 8<sup>th</sup> June 1999. This anomaly was noted by Justice Aganyanya as he then was on 11<sup>th</sup> November 1999 where he stated in these proceedings:-

***“Though this is a high court matter, the grant appears to have been issued and confirmed by deputy registrar of this court. I am not quite sure this is legal.”***

Later on in the proceedings, more particularly on 16<sup>th</sup> February 2000, Justice Aganyanya repeated his concern as above and the proceedings reflect as follows:-

**“ORDER**

***By consent of counsels, the order of this court dated 8<sup>th</sup> administration intestate of the estate of the deceased to the petitioner***

***June 1999 confirming issue of letters of be and is hereby set aside.”***

By the date that consent was entered into, Paul had obtained titles on the sub division of the deceased property and had them registered in his name and into two other person's names. The titles were issued on 6<sup>th</sup> July 1999 to the following:-

- (i) *Ntima/igoki/6022 to Julia Kinangwi Ndung'u daughter of the deceased herein.*
- (ii) *Ntima/igoki/6023 to Mary Mpinda daughter of the deceased herein*
- (iii) *Ntima/Igoki/6024 to Paul Muthuri M'Rintari, petitioner.*

In that background, what this judgment relates to is the cross petition filed by Anita and Stephen. They seek by the cross petition that the court do declare that M'Rintari M'Riria deceased held parcel number 1283 in trust for himself and his two brothers M'Ringera M'Riria deceased and M'Mwithimbu M'Riria deceased. This matter was partly heard before Justice Ouko before he left the station of Meru High Court. He recorded the evidence of Anita and Stephen. I only received the evidence of the petitioner Paul and his witnesses. Anita and Stephen and their witnesses adduced evidence to the effect that parcel number 1283 was ancestral land. That the deceased herein and his two brothers and their families lived on that land. At one time, the elders were invited on land to sub divide it into 3 portions for each brother. Anita and Stephen in view of that evidence sought that the grant would be confirmed in those terms. Paul and his witnesses stated that parcel number 1283 belong to the deceased herein. That the deceased had in his life time purchased various portions of land which at the time of demarcation and land consolidation were registered in the name of the deceased under parcel number 1283. It transpired during the hearing that Paul had filed Meru High Court Civil Case number 56 of 1998. He filed the plaint the day after he filed this petition that is, on 3<sup>rd</sup> of June 1998. In that Civil Case No. 56 of 1998 Paul sued Anita and Stephen seeking a permanent injunction to restrain them from burying John Kiamana M'Mwithimbu on parcel number 1283. He also sought an order of eviction of Anita and Stephen from that land. Anita and Stephen counterclaimed and claimed that they had acquired title to part of that land by way of adverse possession. The case was heard by Justice Juma who gave judgment in favour of Anita and Stephen whilst dismissing Paul's claim. The extracted decree is in the following terms:-

**IT IS HEREBY ORDERED**

1. ***That the judgment be and is hereby entered for the defendants against the plaintiffs jointly and severally.***
2. ***That the suit be and is hereby dismissed and the counter-claim be and is hereby allowed in terms that the land Ref: No. Ntima/Igoki/1283 registered in the name of Rintari Riria deceased holds trust for himself in trust for his two brothers namely:- M'Ringera M'Riria and M'Mwithimbu M'Riria as co-owners.***
3. ***That the defendants be and are hereby entitled to the portions of land Reg. No. Ntima/Igoki/1283 they occupy by way of adverse possession.***
4. ***That the plaintiff jointly and severally be and are hereby ordered to pay the costs of the suit and of counter-claim.***

Looking at the terms of that decree, it become absolutely clear that what I am asked to determine in this succession cause

was determined by another High Court Judge, namely Judge Juma. That judgment to date has not been appealed against. I cannot sit in an appeal against another High Court Judge's decision. In that regard, I am well guided by the case before the Court of appeal **Ntoitha M'Mithiaru Vs. Richard Maoke & 3 others** Civil Appeal No. 272 of 2003 where R.S.C. Omolo J.A. said:-

***“The unlawful and unacceptable mode of service” had been ordered by Onyancha, J. and in all respects, the two judges had the same and equal jurisdiction, Mulwa, J. was here declaring as unlawful and unacceptable orders which had been made by Onyancha, J. In our jurisprudence and with the greatest respect to Mulwa, J. he himself had absolutely no jurisdiction to declare unlawful and unacceptable the orders made by a brother judge of equal and concurrent jurisdiction. If this kind of thing was to be allowed to take root, there will, in my view, be total chaos and confusion in the High Court and there would even be no need for the appeal process.”***

Similarly, in this case, Paul knew that Anita and Stephen were on the land registered in the name of the deceased. Knowing that, when he petitioned he did not inform them of the same nor did he obtain their consent. Perhaps in an attempt to camouflage this succession cause he filed civil case number 56 of 1998 where he sought the eviction and injunction against them. The decree in that case reproduced in this judgment will show that the court found that Anita and Stephen were entitled to the land they occupy. The judgment was delivered on 26<sup>th</sup> June 1998. Despite that judgment being on record, Paul on 8<sup>th</sup> June 1999 a year later obtained confirmation of grant in this matter dividing the very same property that the court found Anita and Stephen were entitled to, between him and his siblings. Paul further obtained the sub divisions of land and the registration of those subdivisions in his name and his sister's names. That least was very deceptive and unlawful. That is, Paul obtained an order in this succession cause which order negated the judgment in Civil Case Number 56 of 1998. This court cannot countenance such an act. Paul cannot be allowed to benefit from his illegal act. The subdivision and the registration of those subdivision obtained after the judgment of the civil case are traceable by this court. This was well stated in the case of **Jane Gachoki Gathecha Vs. Priscilla Nyawira Gitungu & Aho.** Civil Appeal No. 343 of 2002 where the Court of Appeal facing a situation where the respondent had illegally obtained grant of letters of administration and had transferred the suit property into his name and even into a third party's name, had this to say:-

***“We think, with respect, that there is a fallacy in invoking and applying the provisions of sections 93(1) of the Law of Succession Act and the superior court fell into error in reliance of it. The section would only be applicable where, firstly, there is a “transfer of any interest in immovable or movable property”. Kabitao had no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initial and the property is traceable.”***

Similarly, the act of confirming the grant subdividing the land and registering those subdivisions having been done after the judgment of Civil Case Number 56 of 1998 the registered subdivision are traceable by this court. I have considered the District Surveyors Meru Central report dated 22<sup>nd</sup> April 2002 to aid me in deciding how the distribution of the suit

property should be made. The following is the judgment of this court:-

1. ***I order rectification of the registration of parcel number Ntima/Igoki/6022 by cancellation of the name of Julia Kinangwi S. Ndung'u and I order the said parcel of land be registered in the name of Stephen Muchai M'Ringer.***
2. ***I order rectification of registration of parcel number Ntima/igoki/6023 by cancellation of the name of Mary Mpinda M'Rintari and the said property be registered in the name of Anita Makandi Kiamana.***
3. ***I order and grant leave to the land registrar do dispense with the necessity of the original title documents in carrying out the cancellation and registration as in number 1 and 2 above.***
4. ***The injunction issued by this court on 30<sup>th</sup> October 2009 restraining Anita Makandi Kiamana and Lucy Nyamu Mwithimbu from burying Henry Nyamu is vacated.***
5. ***Because the matter before me involves family members, I order each party to bear their own costs.***

Dated and delivered at Meru this 7<sup>th</sup> day of May 2010.

**MARY KASANGO**  
**JUDGE**