



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Succession Cause 294 of 1993**

**IN THE MATTERS OF THE ESTATE OF NDERITU KARIUKI KOIGI – (DECEASED)**  
**THEURI KAHONYA GITUNE.....APPLICANT/RESPONDENT**  
**VERSUS**  
**MARGARET G. NDERITU.....1<sup>ST</sup> RESPONDENT/APPLICANT**  
**DANSON MWAURA MWANGI.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

Theuri Kahoya Gitune has sought the revocation of the grant issued to the 1<sup>st</sup> respondent on the ground that he (the applicant) was entitled to three acres instead of 2.2 acres of L.R. NYANDARUA/SOUTH KINANGOP/7 (the suit land) having purchased the same from the deceased, Nderitu Kariuki Koigi. It was also common ground that the 2<sup>nd</sup> respondent (the applicant also herein) had purchased five (5) acres of the suit land during the lifetime of the deceased.

The court (Mugo, J.) after hearing evidence found no grounds to revoke the grant and instead ordered that the grant-

**“be rectified to the effect that the 2<sup>nd</sup> respondent be and is hereby awarded 5 acres of L.R. NO.NYANDARUA/SOUTH KINANGOP/7 while the applicant gets the remainder thereof.”**

By his application of 16<sup>th</sup> December, 2009, the 2<sup>nd</sup> respondent is seeking that the 1<sup>st</sup> respondent be compelled by an order of this court to execute all the transfer documents within 10 days and in default that the Deputy Registrar of this court be directed to sign the documents on his behalf.

The 1<sup>st</sup> respondent’s advocate was served with the application and the hearing notice but failed to respond or attend when the matter came up for hearing.

The court made a specific order that the applicant was entitled to five (5) acres of the suit land. Pursuant to that order, a Certificate of Confirmation of a grant was issued on 18<sup>th</sup> September, 2009. It has been averred without being controverted that the 1<sup>st</sup> respondent’s advocate has refused to execute the transfer documents.

In the absence of any evidence to the contrary, I find no justification for the 1<sup>st</sup> respondent’s failure to comply. Indeed I have seen on record a Notice of Appeal dated 24<sup>th</sup> September, 2009 expressing the 1<sup>st</sup> respondent’s intention to challenge the judgment. Without any orders to stay those orders, a notice of appeal alone is not enough.

For these reasons, the application is allowed and the respondent in this application is ordered to sign within ten days from the date of this ruling all the transfer documents in favour of the applicant failing which the Deputy Registrar is hereby ordered to sign the said transfer documents on the respondent’s behalf. The respondent shall bear the costs of this application.

Dated, Signed and Delivered at Nakuru this 7<sup>th</sup> day of May, 2010.

**W. OUKO**  
**JUDGE**