



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.1254 OF 2003**

**IN THE MATTER OF THE ESTATE OF NJOROGE GACHUKI (DECEASED)**

**JANE WAMBUI NDIRANGU..... APPLICANT**

**VERSUS**

**PETER GATHECHA NJOROGE**

**SAMUEL MATHU NJOROGE.....RESPONDENTS**

**R U L I N G**

Before me is an application by the applicant seeking several orders from the court. The applicant prays that the court issues an order compelling the Land Registrar, Kiambu to cancel the title deeds in respect of the parcels of land known as LR.Nos.Komothai/Gathugu/1535,1536&1537 which were allegedly illegally issued after parcel No.Komothai/Gathugu/474 (the suit land) was illegally sub-divided. The applicant further prayed that the said Land Registrar be ordered to reinstate the title in respect of the original parcel of land i.e. Komothai/Gathugu/474. The applicant prayed that the court orders the suit land to be sub-divided in accordance with the judgment that was delivered by the Thika Subordinate court on 5<sup>th</sup> December 1991 in Succession Cause No.175 of 1983. The application is supported by the annexed affidavit of the applicant. The 2<sup>nd</sup> respondent, Samuel Mathu Njoroge swore two affidavits in reply and in opposition to application.

At the hearing of the application, this court heard rival arguments made by the applicant, who was acting in person and by Mr. Gatumuta, the advocate for the respondent. I have carefully considered the said submissions. I have also read the pleadings filed by the parties herein in support of their respective opposing positions. The application herein is predicated on the judgment of the subordinate court which was delivered by the Thika subordinate court on 5<sup>th</sup> December 1991. In the said judgment, it was ordered that the applicant retains the place in the suit land that she was residing in at the time of the delivery of the judgment. That portion of land measures two (2) acres. One Mugo Njoroge was ordered to get two (2) acres or in the alternative he be refunded the purchase consideration. The respondents were dissatisfied with the decision of the court, especially the part of the decision that awarded Mugo Njoroge two (2) acres of land. The respondents applied to review the judgment before the same court. The magistrate who had initially heard the case and delivered the judgment (Nyarima S.R.M.) had by that time been transferred from Thika Magistrate's Court. The application for review was heard by a new magistrate (M. Mugo S.P.M.). The new magistrate overturned part of the judgment that awarded the said Mugo Njoroge two (2) acres of land. The court ordered Mugo Njoroge to be refunded the purchase consideration together with interest. The court did not touch part of the judgment that awarded the applicant herein the parcel of land that she was occupying at the time. That part of the judgment is still valid and enforceable. The applicant therefore has a case when she states that the suit land was sub-divided into portions that did not take account the parcel of land that she was awarded by the court. From the applicant's affidavit, it was evident that she was illegally evicted from the suit land. The applicant's husband is buried on the suit land.

So that the parcel of land which was adjudged in favour of the applicant may be excised from the suit land, I will allow the applicant's application. The titles issued by the Land Registrar, Kiambu namely, Komothai/Gathugu/1535,1536&1537 are hereby cancelled. The subdivisions that resulted in the titles are hereby cancelled. The title shall revert to the original title i.e. Komothai/Gathugu/474 (in the name of the deceased). Thereafter, two (2) acres shall be excised from the suit land to cover the area that the applicant occupied prior to her unlawful eviction by the respondents. The applicant shall be put in possession of the portion of land that she previously occupied. This parcel of land shall include the grave of the husband of the applicant. Thereafter, the remaining portion of land shall be divided into two equal portions to be inherited by the two houses of the deceased. The applicant shall have the cost of the application. Either party shall be at liberty to apply.

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2010**

**L. KIMARU**  
**JUDGE**