



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 83 OF 1994

IN THE MATTER OF THE ESTATE OF MBUGUA WANGUNYU KURIA - DECEASED

PETER KIHARA KURIA.....1ST PETITIONER

GRACE WAIRIMU KURIA.....2ND PETITIONER

VERSUS

HANNAH NYAMBURA KURIA.....OBJECTOR

RULING

The Applicant Peter Kuria was granted ex parte orders on 19th January 2010 restraining the Respondent by herself, her servants and/or agents from cutting down trees, ploughing, building and/or putting to waste the Applicant's portion of Plot No. 320, Milangine Scheme. His application was dated 21st October, 2009.

By an application dated 12th February 2010 the Respondent has applied to this court to reverse those orders under Order XXXIX rule 4 of the Civil Procedure Rules. The principal ground is that the orders issued on 19th January 2010 were obtained upon a false affidavit of one Ominde Daniel, a process server who has sworn an affidavit that he never served any summons upon the Respondent.

It is clear from the detailed Report by the C.I.D. attached to the Respondent's Supporting Affidavit sworn on 12th February 2010 that the Respondent was never served, and orders of 19th January 2010 should be set aside ex debito justitiae.

I notice that the Applicant had filed a Notice of Appeal dated 26th March 2006 against the decision of the court delivered on 26th November, 2004.

I would commend the Applicant to pursue that option as it is highly doubtful the judgment of 26th

November 2004 would be subject to review, with a hope that another judge of the High Court would come to a different decision.

I would therefore allow the Respondent's Application dated 12th February, 2010 in terms of prayer (b) thereof, that the order of injunction made on 19th June 2010 be and are hereby set aside and discharged with costs to the Respondent.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 5th day of November 2010

M. J. ANYARA EMUKULE

JUDGE