REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISCELLANEOUS APPLICATION 42 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE NGURU NYAGA…DCD

AND

WILSON KARIUKI NGURU…………………………………………………………APPLICANT

VERSUS

PERIS WAMUGO NJERU……………………………..ADMINISTRATIX/RESPONDENT

JUSTIN NJERU NGURU……………………………..INTERESTED PARTY/RESPONDENT

RULING

The Chamber Summons dated 20/11/2008 is seeking orders of injunction against the respondents Peris Wamugo Njeru and Justin Njeru Nguru. They are supposed to be restrained from alienating, sub-dividing, selling, charging etc. **LR No. NGANDORI KIRIARI/279** pending hearing and disposal of the suit or unless otherwise directed by the Honourable Court. The same is premised on the 7 grounds on its face and the supporting affidavit of the applicant Wilson Kariuki Nguru. It is opposed vide the grounds of opposition dated 12/6/2009. I have considered the application; along with said grounds and the supporting affidavits and grounds of opposition. I have indeed perused the entire file and noted the contents.

From the outset, I wish to agree with Mr. Okwaro for the Respondents that Order XXXIX is not one of the orders of the Civil Procedure Rules that have been imported into the Law of Succession Act. The same does not therefore apply and to that extent, this application is bad in law and calls for striking out. Be that as it may however, I have decided to look at the merits or otherwise of the said application. From the annexed proceeding of the lower court, I have noted that the grant was confirmed on 1/11/1999 and the beneficiaries as listed were given their due shares. This was in the presence of the Applicant Wilson Kariuki, interested party Justin Njeru Nguru and one Ephantus Amos Njeru- another beneficiary. They did not protest. Then 3 years later, the parcels of land were transferred to the beneficiaries as an extract of the Title will show each of the parties herein is therefore registered as absolute owner of their portion. There is therefore no estate left for the 1st Respondent to administer. If she is selling any portion, it would be the one that is in her name. If on the other hand the 2nd Respondent is selling any land, it is the 0.8 Ha registered in his name. I do not see how this affects the applicants 0.8 Ha. The respondents cannot be injuncted from dealing with their land. Indeed, the register does not show that the 1st Respondent is holding the 0.4 Ha as trustee for anybody. She is holding the same as an absolute owner. That is a fact that should not even be in dispute or entangled with the 2nd Respondent's portion. If she was meant to hold the same in trust, the register would have clearly indicated so. The applicant has in my considered view failed to show sufficient cause why the Respondents should be restrained from dealing with the said property. I have looked at the summons for revocation and without intending to pre-empt the outcome, the pendency of the same on record should not act as a bar against the Respondent enjoying their proprietory rights over the plots in question. In the event that the grant is revoked, the land can still

be retraced.

In sum therefore, I find that the application both fails in substance and in form. I dismiss the same with costs in the cause.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 27th day of July, 2009

In presence of:- Mr Mugo for the applicant