

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 549 of 2006

BARII KIBUI ALIAS AMOS BARII KIBUI DCD

AND

JANE NDUTA BARII PETITIONER

RULING

The Summons dated 5th December 2007 is brought by Tabitha Wanjiku Barii. She seeks an injunction against James Githaka Mwangi. The restraining orders that she seeks is to stop he said Mwangi from entering, cultivating, occupying and or interfering with parcel land No. Othaya/Kiahagu/1967. The background to this matter is that the co-wife to Tabitha Wanjiku that is Jane Nduta obtained a confirmed grant on 19th April 2007 in respect of a written will. On receiving a confirmed grant she sold the property Othaya/Kiahagu/1964 to Mwangi. The applicant in the present summon stated that the said Mwangi did not take possession of that property after the purchase. The same is occupied by the son of applicant Benson Kibui. The said son has build on that land and the applicant carries on farming of subsistence crops on the same land. On 4th December 2007 she stated that Mwangi with his workers entered the land and started digging. In so doing they threatened to evict her son from that land. It is on that basis that the applicant seeks an injunction. Both Mwangi and Jane Nduta opposed the application. In their submissions they argued that Mwangi is protected by section 93 of the Succession Act. Being so protected they argued that the orders sought cannot be granted.

Section 93(1) of the Succession Act provides as follows;-

“A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this act.

(2) a transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have noticed that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.”

It ought to be understood that what is before court is Interlocutory Application. The main hearing for revocation of grant is yet to be heard. That being the case the issue of whether or not the said Mwangi purchased the property will be subject for consideration at the main hearing. The court at this stage is of the view that the orders to restrain Mwangi are merited. The court grants a temporary injunction to restrain James Githaka Mwangi, his servant, agents or his family from entering parcel NO. OTHAYA/KIAHAGU/1967 and interfering with the applicant’s peaceful occupation thereof until the hearing and determination of the Summons for Revocation dated 25th June 2007.

Dated and delivered at Nyeri this 10th day of April 2008.

MARY KASANGO

JUDGE