



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Succession Case 758 of 2002**

**IN THE MATTER OF THE ESTATE OF NGURU KIMANI.....DECEASED**

**AND**

**MADRINA MUTHONI MWANIKI.....PETITIONER**

**VERSUS**

**PETER KARIUKI NGURU.....OBJECTOR/PROTESTER**

**AND**

**MATHEW JUSTUS GACHOKI MBOGO.....INTERESTED PARTY**

**RULING**

There is before court summons dated 6/12/2007 under rule 49 and 73 of P& A Rules Succession Act. The applicant seeks orders to cancel certain deeds namely Kabare/Kiritiri/1794, 1795, 1796 and 1797 which are subdivision of original No. Kabare/Kiritiri/627. And that the Registrar do dispense with production of Title No. 1794. This application is not opposed by Peter Kariuki Njiru the objector. But it is opposed by Mathew Justus Gachoki Mbogo the interested party who has filed affidavit saying his land plot No. Kabare/Kiritiri/1794 should not be interfered with. He says he purchased the land from the Applicant for Shs.150,000/=. He has exhibited agreement and other documents which shows that he entered into agreement of purchase of that plot on 4/7/2005 and even in June 1999 and August 1999 that purchase was in progress. Mutation Forms were completed on 5/9/2003 and the interested party was registered as proprietor of land on 31/10/2003 and on 12/1/2007 a restriction was registered at the request of D.O. Gichugu Division.

Upon an examination of affidavits there are no other persons complaining because the other plots are still registered in the name of the Applicant. The deceased passed away in 1967. Therefore these transactions were before the grant. Looking at Succession Act Cap 160 Section 45 it is provided that unless expressly authorized by the Act or by any other written law or by a grant of representation under this Act no person shall for any purpose take possession or dispose of or otherwise intermeddle with any free property of a deceased person.

In this case the applicant was not authorized by any law or a grant of representation to carry on the transaction of subdividing the land or of offering land for sale to the interested party. She was committing a criminal offence. So also the persons who were assisting her. Section 82 (b) (ii) it is provided that no immovable property shall be sold before confirmation of the grant. The applicant has

breached this provision of law in purporting to sell and transfer the deceased part of the property before the grant was confirmed. The court cannot countenance actions of illegality for whatever reason.

The application is therefore allowed and orders granted as prayed. No order as to costs.

Dated this 22<sup>nd</sup> May, 2008.

**J. N. KHAMINWA**

**JUDGE**

**22/5/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Ms. Thungu HB for Mr. Ndana for protester**

**Objector present in person**

**Interester Party present in person.**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**