



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Succession Cause 61 of 1994**

**IN THE MATTER OF THE ESTATE OF BEATRICE WANGARI**  
**GATHII ALIAS WANGARI W/O GATHII ..... DECEASED**  
**STEPHEN MWANGI GATHII ..... APPLICANT**

**Versus**

**JOHN KARIUKI GATHII ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS GITAHU GATHII ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Summons dated 21<sup>st</sup> February 2008 seeks an injunction to restrain the first respondent from developing, wasting or disposing of LR NO. **TETU/ICHAGACHIRU/976**. The background to this matter is that the grant was confirmed on 30<sup>th</sup> January 2007 when the estate property was to be divided equally amongst the beneficiaries who are the sons of the deceased. The applicant in his supporting affidavit stated that the subdivision was carried out without his knowledge by the administrator. In that subdivision parcel No. 976 was given to the first respondent who had begun to construct a house on the said land. The applicant said that the manner in which the subdivision was carried out would deprive him access to the main road and the user of 500 tea bushes. It ought to be noted that injunction being sought is temporary pending the hearing of the application for revocation of grant. The respondent opposed the application. In opposing he stated that the land had already been subdivided amongst the beneficiaries. That the applicant had been involved in the whole process of subdivision. The land the subject of this matter is said to be steep on one side and gentle on the other side. The subdivision was carried out so as to ensure that each beneficiary got a portion of the steep and the gentle part. It was stated that subdivision was carried out according to where each beneficiary had carried out development. The mother of the beneficiaries in her lifetime had given indications where each beneficiary should inherit. It is as a result of that indication that the respondent said that the beneficiaries had carried out development. There was an affidavit sworn by a licensed land surveyor. The surveyor stated that he had carried out the subdivision and in so doing he had ensured that each beneficiary would take a portion of the top and the bottom part of the land. These ensured that each beneficiary got an area where the homestead was and an area that was agriculturally productive. He attached to the affidavit a sketch plan of the subdivision. The applicant was of the view that the subdivision was unequitable. Instead he gave his version of how the subdivision should be carried out. I have considered the applicant's application. The applicant did not deny that each beneficiary had been shown the portion of land they were to inherit. He also did not deny that beneficiaries had undertaken developments accordingly. With that in mind I find that the application has no merit. In perusing the court file I did find an affidavit sworn by the administrator on 18<sup>th</sup> June 2007. In that affidavit the administrator indicated that the applicant was uncooperative and was refusing to sign documents relating to the transfer in conformity to the confirmed grant. It was argued before me that the applicant is uncooperative to the other beneficiaries. In view of that and because the applicant did not controvert the averments that he was uncooperative I find that the application cannot be granted. The summons therefore dated 21<sup>st</sup> February 2008 is hereby dismissed with costs being granted to **John**

**Kariuki Gathii.**

DATED AND DELIVERED THIS 21<sup>ST</sup> DAY OF JULY 2008

**MARY KASANGO**

**JUDGE**