



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

**Civil Appeal 68 of 1993**

**PETER WAMBUGU GICHOMO .....**  
**APPLICANT**

**VERSUS**

**NAHASHON NGIGE GICHOMO**

**Substituted by ELIUD WACHIRA NGIGI .....**  
**RESPONDENT**

**R U L I N G**

By a notice of motion dated 25<sup>th</sup> January 2006 brought under section 3A of the civil Procedure Act and Order 50 rule 1 of the Civil Procedure Rules, the applicant Peter Wambugu Gichomo seeks orders that:

- 1. *That the interest of the applicant of 3 acres out of LR Baragwi/ Thumaita/487 be excised as per the decree in this appeal of 11<sup>th</sup> November 2003 which upheld the decision of the lower court before Kerugoya P.M. Succession Case No. 55 of 1996 is determined.***
- 2. *That such orders be granted as will protect the applicant's interest of 3 acres out of LR Baragwi/Thumaita/487.***

It is the applicant's contention that LR Baragwi/Thumaita/487 is the subject property of Kerugoya P.M. Succession Cause No. 55 of 1996, and that the trial magistrate in the succession cause is abusing the judicial process by disregarding the judgment of this court and ordering the cancellation of the subdivision done in the applicant's favour.

The application is opposed by Eliud Wachira Ngigi who substituted Nahashon Ngigi Gichomo and who has filed a replying affidavit objecting to the application. It was submitted by Mr. Okwaro who appeared for the Respondent that the application before the court is an abuse of the court process as the Kerugoya Succession Cause is simply dealing with the estate of the original Respondent who is now deceased and that the interest of the applicant is going to be taken care of during the distribution of the estate.

Having considered this application I find that the same is not properly before this court. This suit came before this court by way of an appeal which appeal was heard and a judgment delivered upholding the decision of the lower court. The applicant having been successful in both the lower court and the High Court apparently seeks to execute the decree in his favour. This court has however no role to play in the execution of that decree as that must be done in the original case i.e. Kerugoya SRMCC 87 of 1993 and 106 of 1993 (consolidated).

A complaint has been made that the Respondent is abusing the process of the court by disregarding the judgment of this court and proceeding with Kerugoya Succession Cause No. 55 of 1996 in which the property to be distributed is LR Baragwi/Thumaita/487 i.e. the suit property in this appeal. That may well be so, however the application before this court is not the appropriate forum to deal with such excess of jurisdiction. The court cannot deal with such a matter in a suit invoking its appellate jurisdiction nor can the court deal with the matter under section 3A of the Civil Procedure Act since there are clear provisions providing for the exercise of this court's supervisory powers.

For these reasons I decline to make the prayers sought and do dismiss the application dated 25/1/2006.

*Dated signed and delivered this 15<sup>th</sup> day of March 2006.*

**H. M. OKWENGU**

**JUDGE**