



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

Misc Succ Case 73 of 2004

NYAGA KARIGE.....DECEASED

AND

TERESIA WAWIRA NYAGA.....APPLICANT

FRANCIS NJOGU NYAGARESPONDENT

RULING

1. The Applicant herein is Teresia Wawira Nyaga and she beseeches this Court to invoke its inherent jurisdiction under S.3A of the Civil Procedure Act and grant **“a stay of execution of the confirmed grant of representation”** in Embu SPMCC Succession Cause No. 262 of 1995, **“restraining the Respondent from sub-dividing the parcel of land No.GATURI/WERU/499 pending the hearing and determination of the Application for annulment and revocation of the confirmed grant”**.

2. I have read the Supporting Affidavit of the Applicant and the one in reply by the Respondent, Francis Njogu Nyaga and the facts are that;

- i) The parties are sister and brother respectively although the Respondent says that the Applicant is his step-sister not born of his father.
- ii) The Respondent filed Succession Cause No. 262 of 1995 in SPM’s Court Embu but did not include the Applicant nor his sisters and beneficiaries of their late father.
- iii) The Applicant filed an Application in this cause seeking that the grant be annulled or revoked for reasons that she and her sisters were unaware that the Succession Cause in the Lower Court had been finalized and that the land comprised in the estate had been given to the Respondent who was now planning to sub-divide it and in effect disinherit the Applicant and her sisters.
- iv) The Respondent depones that the Applicant and her sisters are all married women, do not live on their late father’s land and have no lawful interest in it.

3. I have perused the application and although worded rather untidily, I see that what the Applicant seeks is that the land comprised in the Estate be retained as it is until the Application for Annulment is heard and determined. In matters of this nature, where the only asset is the parcel of land, then it would be a travesty of Justice to allow the Respondent to sub-divide it when his ownership is being challenged in Court. I have not been told what prejudice would be occasioned to the Respondent if matters remain as they are until this Court rules one way or the other.

4. Although as I said the Application is badly drafted, I should not punish an innocent litigant who in any event has shown that there is a **prima facie** case shown, as she is indeed a beneficiary of the estate, who it is admitted was deliberately left out for reasons that I cannot at present sustain.

5. I shall therefore and only for the ends of Justice to be met make the following orders;-

i) that a temporary injunction do issue restraining the Respondent from sub-dividing parcel No.GATURI/WERU/499 until the hearing and determination of the Application for Annulment and Revocation of grant in SPMC Succession Cause No.262 of 1995 (Embu).

ii) Costs shall be in the cause.

Orders accordingly.

Read in open court this 26th day of January 2005

I. LENAOLA

JUDGE

In presence of;

Mr. Utuku for Applicant

Mr. Okwaro for Respondent

I. LENAOLA

JUDGE