



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELCA NO. 8 OF 2018**

**JANE NJERI MURIITHI (Suing as the Administrator of the Estate of  
MURIITHI NGARI MBARU Alias TITUS MURIITHI).....PLAINTIFF**

**VERSUS**

**PETER GITHINJI MUTHIGANI.....RESPONDENT**

**RULING**

Vide a Notice of Motion dated 18/6/2021, the Applicant sought the following orders;

1. (Spent).

2. This court do authorize the Land Registrar Kirinyaga to cancel the entries made over the green card of the suit land MWERUA/KANYOKORA/118 being Entry Number 5, 6, 7 & 8 and reinstate entry number 4 in the green card of the suit land Mwerua/Kanyokora/118 and cancel any subdivisions that resulted from the suit land.

3. That this Court do reinstate the title deeds for land parcel Nos. MWERUA/KANYOKORA/1361, MWERUA/KANYOKORA/1362, MWERUA/KANYOKORA/1363, and MWERUA/KANYOKORA/1364 and the Titles issued in furtherance of the order of 18/8/2010 being MWERUA/KANYOKORA/1474, MWERUA/KANYOKORA/1475, and their subdivisions being MWERUA/KANYOKORA/1515-1518 be cancelled.

**4. Costs be provided.**

The Application is premised upon grounds apparent on the face of the application and the supporting affidavit of the applicant. The affidavit is further supported by numerous annexures thereto.

The application is opposed with a Replying affidavit sworn by the respondent on 26/7/2021.

According to the applicant, this court heard the appeal herein and rendered itself on 5/7/2019.

When she presented the court order to the Land Registrar Kirinyaga to effect the same, she declined stating that she did not understand what was required of her.

The applicant further stated that the order she had appealed against was by the Magistrate Court at Baricho Magistrate's Court where she ordered cancellation of title deeds over land Nos. MWERUA/KANYOKORA/1361-1364. That after cancellation of the aforementioned titles, she was aggrieved and preferred an appeal to this Honourable Court which appeal was successful. She now contends that the respondent during the pendency of the appeal sub-divided and transferred resultant portion to third parties.

The Respondent opposed the application and stated that the prayers being sought by the applicant are beyond the prayers that were sought in the Memorandum of Appeal.

The respondent also argued that the prayers being sought in this application are also the subject of another suit being ELC No. 188/2018, Kerugoya. He contends that this Court cannot issue orders that will affect parcels of land that were not the subject of this appeal and parties who own the subsequent sub-divisions of the suit land when those parties are not parties in this appeal and have not been afforded a hearing.

In conclusion, the respondent stated that these parties who are proprietors of the subsequent resultant sub-divisions are James Munene Ndumbi, Jack Gitari Murimi, Miriam Wambui Gitari, James Ngatia Kiragu, Benson Maina Kabau, Margaret Wanjiku, Simon Mugo Kinyua and Susan Wanjiru Mwangi who are currently interested parties in Kerugoya ELC 188 of 2018.

**LEGAL ANALYSIS AND DECISION**

I have considered the application, the affidavits, both in support and in opposition thereto as well as the submissions and the applicable law. It is important to note that from the supporting affidavit sworn on oath, the applicant stated that the respondent caused the subdivision and transfer of the resultant portions of the suit property during the pendency of this appeal. It was only after judgment had been entered and the applicant was presenting the decree for execution when she realized that the suit property was no longer existing in its original form.

The jurisdiction of the High Court and Courts of equal status sitting as the first appellate Court is provided under **Section 79D of the Civil Procedure Act** which states that no second appeal from a decree passed in appeal by the High Court shall lie. It is not in doubt that this court rendered itself on this appeal on 5/7/2019. Thereafter this court becomes functus officio.

What I understand the applicant asking this court to do is to have a second appeal from a decree passed in this appeal which is unlawful. In my view, the applicant’s remedy lies elsewhere. In any event, the proprietors of the properties which the applicant is asking this court to cancel are not parties in this case which would be in breach of rules of natural justice if the application was to be allowed without affording them a right to be heard.

I have looked at the authorities referred by the applicant and find them irrelevant and distinguishable. The overall finding of my analysis is that the Notice of Motion dated 18/6/2021 lack merit and the same is hereby dismissed with costs. It is so ordered.

**RULING READ, DELIVERED IN OPEN COURT AT KERUGOYA AND SIGNED THIS 12TH DAY OF NOVEMBER,2021.**

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**HON. E.C. CHERONO**

**ELC JUDGE**

*In the presence of:-*

1. Mr. Makur holding brief for Waweru Macharia
2. Ms Wanjiru holding brief for Ann Thungu
3. Kabuta – Court clerk.