



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 346 OF 1986

IN THE MATTER OF THE ESTATE OF DANIEL WAINAINA GACHOKA

alias DANIEL MARIBA GACHOKA (DECEASED)

JOHN MBIRI GACHOKA

LUCAS KAIRU WAIRIMU (as the administrators of the Estate of

MARGRET MAGIRI (Deceased))APPLICANTS

VERSUS

STEPHEN KAGUKU MARIBARESPONDENT

RULING

(1) Before this Court is the Notice of Motion dated 16th July 2020 in which **JOHN MBIRI GACHOKA & LUCAS KAIRU WAIRIMU** (as administrators of the Estate of **MARGARET MAGIRI**) (hereinafter '**the Applicants**') seek the following orders:-

1. SPENT

2. SPENT

3. The Honourable Court be pleased to order that the Confirmed Grant issued to STEPHEN KAGUKU MARIBA be revoked.

4. In the alternative, the Honourable Court be pleased to order that he confirmed grant issued to STEPHEN KAGUKU MARIBA be amended or rectified to remove half of the LR No. Kiganjo/Kiganjo/110 from the assets of the estate of DANIEL WAINAINA GACHOKA alias DANIEL MARIBA GACHOKA.

5. The Respondent be compelled to sign the mutation and transfer forms hiving off half of LR No. Kiganjo/Kiganjo/110 to the personal representatives of the Estate of Margaret Magiri (Deceased), failing which the Deputy Registrar of this Honourable Court to sign the said the mutation and transfer forms.

6. The costs of this application be provided for.

(2) The Application was premised upon **Section 76** of the **Law of Succession Act**, and **Rule 44(1)** of the **Probate and Administration Rules** and was supported by the Affidavit sworn on 16th July 2020 by the 1st Applicant **JOHN MBIRI GACHOKA** and the 2nd Applicant **LUCAS KAIRU WAIRIMU**.

BACKGROUND

(3) This cause relates to the estate of **MARGARET MAGIRI** (the Deceased) who in **High Court Civil Case No. 1554 of 1989** was declared to have acquired by way of adverse possession a half share in the property known as **Title L.R. No. Kiganjo/Kiganjo/110**. The Court of Appeal in **Civil Appeal No. 188 of 2002** upheld the decision of the High Court that the Deceased and her children were entitled to equal proportions in the estate of **DANIEL WAINAINA GACHOKA** alias **DANIEL MARIBA GACHOKA**.

(4) The Applicant alleges that despite being fully aware of the above decisions the Respondent proceeded to sub-divide the said parcel of land to his immediate family to the exclusion of the beneficiaries of **MARGARET MAGIRI** (the Deceased) in effect disinheriting them. Hence the present application.

(5) The Respondent despite having been served with the present application failed to file any reply thereto.

ANALYSIS AND DETERMINATION

(6) The application was disposed of by way of written submissions. The Applicants filed in Court their written submissions dated **28th January 2021**.

(7) I have carefully considered this application, the Affidavit in Support as well as the annexures thereto. It is evident that the Applicants did file another application dated **28th June 2019** seeking similar orders. In a ruling delivered on **27th February 2020**, **Hon. Lady Justice Ali-Aroni** delivered a Ruling in which she stated as follows:-

“6. I have considered the matter and do concur with the Respondent on the Applicants capacity to bring this application as they are neither the representatives of the estate of Margaret Magiri (Deceased) nor the estate of Kibe Mariba (Deceased) though I note that the Applicants may have a genuine claim nonetheless.

7. Consequently, I will decline the application for now. The Applicants be at liberty to re-apply as the application is not yet determined on merit once they obtain legal capacity.”

(8) The Applicants have not demonstrated that they are the legal representatives of the estate of the late **Margaret Magiri**. As such the Applicants have failed to comply with the directives given by **Justice Ali-Aroni** in her Ruling of **26th February 2020**. All they have done is to file the same application once again. The orders sought in this application cannot be granted to the Applicants until the orders of **Justice Ali-Aroni** have been complied with. Only then will the Applicants have the requisite locus standi to pursue this matter. In the circumstances I do hereby strike out the Notice of Motion dated **16th July 2020** and make no orders on costs.

DATED IN NAIROBI THIS 7TH DAY OF MAY, 2021.

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MAUREEN A. ODERO

JUDGE