

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 112 OF 2016

IN THE MATTER OF THE ESTATE OF JOHNSON NJOGU GICHOHL.....(DECEASED)

AND

LUCY WANGITHI MUGERA.....OBJECTOR

V E R S U S

WINFRED NJERI NJOGU.....ADMINISTRATRIX

DIRECTIONS

1. In this matter, Winfred Njeri Njogu filed a Notice of Motion dated 5/3/2019 under **Article 159 (2) (d) & 162(2)(b) of the Constitution and Section 71, 72, 73 & 75 of the Land Registration Act (Cap 300 of the Laws of Kenya and Section 1A, 1B & 3B of the Civil Procedure Act**. The substantive prayers in the application is that the transfer of Wang'uru Mugeru be cancelled. She was also seeking an order of injunction restraining the objector from selling, transferring, charging or in any other manner dealing with Wang'uru/Plot B 158 currently registered in her name. She was also seeking an order that the title document be deposited in court.

2. The application is based on the grounds that the plot was registered in the name of the deceased but was transferred into the name of the objector after the death of the deceased through collusion with officials of County Council of Kirinyaga.

3. On 8/3/19 the court issued an order prohibiting any dealing in the said plot pending the hearing and determination of this application.

4. The application was served on the respondent but she did not oppose the application. I directed that since the application was not opposed it was allowed as prayed. I further directed that since the grant was revoked, the cause be listed for hearing.

5. When the matter came up for mention Mr. Momanyi sought directions since the court had stated that Plot. No. B 158 is not part of the estate and therefore not part of the cause. That when the matter came up for hearing of the application the court was not put in the picture. He therefore urged me to set aside the orders of 19/3/19.

6. The applicant did not oppose the oral submissions. I have considered the application. I gave a judgment in this matter on 31/7/2018 and held that Plot No. 158B does not form part of the estate of the deceased. The Judgment is on record.

7. For the applicant to file an application seeking to have the transfer of Plot No. Wang'uru/Plot B 158 cancelled is mischievous and an attempt to avoid the judgment of this court. The applicant failed to bring to my attention the fact that I had already given Judgment in the matter. It is true that since this court had issued a final Judgment on the subject, the only option was to file an appeal or seek review of the Judgment.

8. In the circumstances I order there is a judgment on plot No. Wang'uru/Plot B 158 and the order issued on 26/3/2019 ought not to have been issued in the first place. I order that –

1) The order issued on 26/3/2019 in an application dated 5/3/19 is hereby vacated and set aside.

2) There is a Judgment on record and a party not satisfied should follow the laid down process to challenge it.

Dated at Kerugoya this 11th day of May 2020.

L. W. GITARI

JUDGE