



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2622 OF 2019**

**IN THE MATTER OF THE ESTATE OF MUIRU GIKANGA (DECEASED)**

**HUMPHREY GITHAIGA MUIRU.....ADMINISTRATOR/APPLICANT**

**VERSUS**

**PETER JOHN GAKONDE NYAGA.....1<sup>ST</sup> RESPONDENT**

**CATHERINE WANJIKU GAKONDE.....2<sup>ND</sup> RESPONDENT**

**CYRUS KOMO CHEGE.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The deceased Muiru Gikanga died intestate on 29<sup>th</sup> September 1982. He was survived by widows Ruth Gacheri Muiru and Hannah Wambui Muiru, and children Humphrey Githaiga Muiru (the administrator/applicant), George Githaiga Muiru, James Waiganjo Muiru, David Wakahiu Muiru and Francis Mwaniki Muiru.
2. On 18<sup>th</sup> November 1999 the applicant petitioned this court for the grant of letters of administration intestate. He indicated the estate of the deceased to comprise LR No. Limuru/Bibirioni/1647 (indicated to be LR No. Limuru/Bibirioni/1787 and 1788) measuring 9 acres and LR No. Limuru/Bibirioni/1602 being one acre. The grant was issued on 20<sup>th</sup> June 2000. On 29<sup>th</sup> March 2001 he applied for the confirmation of the grant. He sought partial confirmation in which he asked that LR No. Limuru/Bibirioni/1602 be registered in his name to hold in trust for himself and for the other beneficiaries in equal shares. The grant was confirmed in those terms on 28<sup>th</sup> November 2001.
3. It is clear that over the same estate of the deceased, Fredrick Francis Mwaniki Muiru filed **Succession Cause No. 39 of 1985** at Kiambu Senior Resident Magistrate's Court and obtained a grant of letters of administration intestate which was confirmed. Fredrick was to be registered to hold LR No. Limuru/Bibirioni/1647 for himself and LR Limuru/Bibirioni/1602 for himself and Nicholas Macharia. When the applicant discovered this, he moved to Kiambu Court to seek the revocation of the grant. On 7<sup>th</sup> February 1986 a consent was recorded in which the grant issued to Fredrick on 13<sup>th</sup> December 1985 was revoked and all transactions effected pursuant to the grant were cancelled.
4. When Fredrick Francis Mwaniki Muiru got LR No. Limuru/Bibirioni/1647 he subdivided it into LR No. Limuru/Bibirioni/1787 and 1788 and sold them to Peter John Gakonde Nyaga and Cyrus Komo Chege. These transactions (subdivision and any transfer) were cancelled when the grant to Fredrick Francis Mwaniki Muiru was cancelled.
5. Peter John Gakonde Nyaga applied to have the grant in the instant cause revoked. The application was dismissed on 7<sup>th</sup> March 2013.
6. In the application dated 7<sup>th</sup> November 2017 Peter Njogu Turuga and Peter Kinuthia Mwaniki applied to have them joined in these proceedings and to have the grant issued to the applicant revoked. Their case was that they were grandson and great grandson, respectively, of the deceased and they had been in occupation of LR No. Limuru/Bibirioni/1602 since 1986, and had filed **ELC No. 1308 of 2014** at the Environment and Land Court claiming adverse possession. The application to join these proceeding was rejected on account of lack of jurisdiction as the claim they were pursuing was properly before an Environment and Land Court which was mandated to handle and determine their claim.
7. The present application dated 28<sup>th</sup> January 2019 by the applicant against Peter John Gakonde Nyaga (1<sup>st</sup> respondent), Catherine Wanjiku

Gakonde (2<sup>nd</sup> respondent) and Cyrus Komo Chege (3<sup>rd</sup> respondent) seeks that an order be issued to the Lands Registrar Kiambu to cancel the subdivisions LR No. Limuru/Bibirioni/1787 and 1788 done on LR No. Limuru/Bibirioni/1647 in accordance with the order of cancellation of all the transactions done pursuant to the grant that had been issued by Kiambu Court following the revocation of the grant.

8. The 2<sup>nd</sup> respondent swore a response to say that her husband bought LR No. Limuru/Bibirioni/1788 from Fredrick Francis Mwaniki Muiru following the succession cause in Kiambu, took possession and got it registered in his name. She contested the application to have the registration cancelled. Her husband is the 1<sup>st</sup> respondent. She stated that they were unaware of the cancellation of title by the subordinate court. Further, she stated that they were innocent buyers for value without notice.

9. Written submissions were filed for the applicant and for the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

10. The court's appellate jurisdiction has not been invoked in relation to the orders by the subordinate court at Kiambu that revoked the grant that had been issued to Fredrick Francis Mwaniki Muiru from whom the respondents bought parcels LR No. Limuru/Bibirioni/1787 and 1788. Following the revocation order, the court cancelled all transactions made on LR No. Limuru/Bibirioni/1647 (the mother title of 1787 and 1788). The orders of the court ended, as it were, any claims upon 1787 and 1788. The issues whether the court acted properly and the respondents had obtained good title on the basis being innocent buyers for value without notice cannot be argued before this court in its present jurisdiction. It follows that the respondents have no defence to the application.

11. The result is that the application has merits and is allowed with costs.

**DATED and DELIVERED electronically at NAIROBI this 2<sup>ND</sup> NOVEMBER 2020.**

**A.O. MUCHELULE**

**JUDGE**