



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO.793 OF 1985**

**IN THE MATTER OF THE ESTATE OF JOHN KING'ANG'I THIONG'O (DECEASED)**

**GRACE NJERI KINGANGI.....APPLICANT**

**VERSUS**

**DEDAN THIONG'O JOHN.....1<sup>ST</sup> RESPONDENT**

**WALTER GITAU JOHN.....2<sup>ND</sup> RESPONDENT**

**LIZIE NJOROGE.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The deceased John King'ang'i Thiong'o died on 31<sup>st</sup> January 1975. His estate comprised of LR No. Dagoretti/Uthiru/222 and Dagoretti/Uthiru/T.340-Kiambu. The grant was issued to the respondents on 3<sup>rd</sup> December 1987 and confirmed on 20<sup>th</sup> September 1988. On 3<sup>rd</sup> May 2012, the applicant sought to have the grant revoked on the grounds that it was obtained fraudulently by making a false statement and concealment to court of something material to the cause. The application was dismissed on 10<sup>th</sup> May 2016.
2. The applicant filed summons dated 17<sup>th</sup> January 2017 seeking that the respondent, their servants and agents be restrained from interfering with the applicant's use of the quarry already in use on Dagoretti/Uthiru/222 pending hearing and determination of the appeal to the court of appeal.
3. The application was supported by the applicant's affidavit dated 17<sup>th</sup> January 2017. It was her case that during the deceased's lifetime and during the proceedings of this case she was excavating stones for sale for her upkeep on Dagoretti/Uthiru/222. However, the respondents have now illegally stopped her from accessing the quarry as a result causing her great emotional and financial stress.
4. The 3<sup>rd</sup> respondent filed the grounds of opposition on 17<sup>th</sup> May 2018, on the grounds that the parcel Dagoretti/Uthiru/222 was subdivided in 1992 and was transferred to 3<sup>rd</sup> parties.
5. The 1<sup>st</sup> and 2<sup>nd</sup> respondents did not file their replying affidavit.
6. I have considered the application, the response and the written submissions. The question to be determined is whether the applicant has made a case for the grant of injunction pending the hearing and determination of the appeal that was preferred against the judgment dismissing her application for the revocation of the grant that had been issued to the respondents.
7. It is material that in the judgment it was pointed out that the deceased's land parcel Dagoretti/Uthiru/222 was subdivided and respective portions sold and transferred to 3<sup>rd</sup> parties. The 3<sup>rd</sup> parties were not made parties to these proceedings. It is trite that an injunction cannot issue against an owner of land without reference to him.
8. Secondly, it is now law that negative orders are incapable of execution and hence cannot be stayed or enjoined (**Raymond M. Omboga – v- Austine Ryan Maranga, HCCA No. 15 of 2010**). The judgment being appealed against was a negative one. It dismissed the applicant's application for revocation.

9. In conclusion, I find no merit in the application by the applicant. I dismiss the same with costs.

**DATED and SIGNED at NAIROBI this 5<sup>TH</sup> day of FEBRUARY 2019.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 12<sup>TH</sup> day of FEBRUARY 2019.**

**ALI-ARONI**

**JUDGE**