



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 126 OF 2013**

**IN THE MATTER OF THE ESTATE OF NGORE NDINWA ... (DCD)**

(Formerly Succ Cause No. 419 of 2011 at Embu Magistrate's Court).

**PETER KIAMA NGARI.....APPLICANT**

**V E R S U S**

**ROSE WANJIRU MUCIRA.....1<sup>ST</sup> RESPONDENT**

**JOSEPH MURIITHI NJOKA.....2<sup>ND</sup> RESPONDENT**

**JOSEPH GACHOKI NGARI.....3<sup>RD</sup> RESPONDENT**

**PETER GITARI NGARI.....4<sup>TH</sup> RESPONDENT**

**SYMON MURAGE NGARI.....5<sup>TH</sup> RESPONDENT**

**JULIA WANJIKU MUCHIRA.....6<sup>TH</sup> RESPONDENT**

**MURIUKI GICHOBI.....7<sup>TH</sup> RESPONDENT**

**ROSALID KANINI NGORE.....8<sup>TH</sup> RESPONDENT**

**MAURA MUTHONI NGURI.....INTERESTED PARTY**

**JUDGMENT**

1. This matter relates to the Estate of Ngore Ndinwa (deceased).

Rosalind Kanini Ngore and Maura Muthoni Nguri were issued with grant of letters of administration of the estate of Ngore Ndinwa and the same was confirmed on 16/9/09 whereby the deceased's estates were shared out as hereunder;

**1. Baragwe/Thumaita/2665**

Rose Wanjiru Mucira – 0.28 Ha

**2. Baragwe/Thumaita/2666**

Joseph Muriithi Njoka – 0.28 Ha

**3. Baragwe/Thumaita/2667**

Joseph Gachoki Ngari – 0.18 Ha

Peter Kiama Ngari – 0.14 Ha

#### 4. Baragwe/Thumaita/2668

Peter Gitari Ngari – 0.18 Ha

Symon Murage Ngari – 0.14 Ha

#### 5. Baragwe/Thumaita/2669

Symon Maina Gichohi – 0.43 Ha

Julia Wanjiku Muchira – 0.43 Ha

Muriuki Gichobi – 0.21 Ha

#### 6. Ngariama/Kabare/784

Rosalind Kanini Ngore – 0.40 Ha to hold in trust for G N and D M N (minors).

2. The applicant Peter Kiama Ngari has filed an application dated 24/09/2011 seeking to revoke the said grant and the Court issues fresh grant in conformity with judgment of **SRMCC No. 199 of 2006** delivered on 02/11/2008. The application was based on the fact that the confirmed Grant lists the 1<sup>st</sup> and 2<sup>nd</sup> respondent as beneficiaries of **Baragwe/Thumaita/2665 and 2666** as alleged purchasers while the judgment of **SRMCC No. 199 of 2006** stated the alleged sale was void. That as a result, the applicant and the 1<sup>st</sup> administrator have been disinherited of a large share of their entitlement of the estate.

3. As per the judgment in **SRMCC No. 199 of 2006**, the court ruled that Joseph Muriithi Njoka paid part of the purchase price but the sale was not completed. It was therefore void of land control board's consent and the only remedy would be refund of his purchase price. On an application for review the court held that the estate to off-set Kshs.530,000/= paid to the deceased during his lifetime or a portion of land equivalent to same amount and Kshs.170,000/= be paid by the petitioners to the applicants personally.

4. The 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents affirmed that the sale of the land to the 1<sup>st</sup> and 2<sup>nd</sup> respondent was null and void and therefore they have no rightful claim in the deceased's estate.

5. The 1<sup>st</sup> administrator and interested party stated that she was not given any share of the estate and her name was left out and she did not receive any purchase price from the 1<sup>st</sup> and 2<sup>nd</sup> respondents. That her late husband had expressed how the remaining estate would be shared out and the 1<sup>st</sup> and 2<sup>nd</sup> respondents were not mentioned anywhere.

6. The 9<sup>th</sup> respondent stated that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were awarded **Baragwe/Thumaita/2665 and 2666** because they recognized their claim as a liability to the estate. That **SRMCC No. 199 of 2006** held that the estate to off-set Kshs.530,000/= paid to the deceased during his lifetime or a portion of land equivalent to same amount. In addition, her co-wife the 9<sup>th</sup> respondent and herself acknowledged receipt of balance of purchase price and were ordered to pay back. Therefore they surrendered the portions to fulfill the wish of their late husband.

7. The 1<sup>st</sup> and 2<sup>nd</sup> respondent acknowledged that they bought 1 ½ acres from the deceased and paid deposit of Kshs.530,000/=. They paid the balance to the administrators and the court ordered they be refunded the purchase price or a portion of land equivalent to the amount. Therefore, they were awarded 0.28 Ha from **Baragwe/Thumaita/2665 and 2666**.

8. On 24/05/2008 consent was recorded between the applicant and the 2<sup>nd</sup> respondent whereby they agreed that **Baragwe/Thumaita/2666** would revert to the deceased while the summons for revocation of grant shall proceed against the other respondents.

9. Therefore the issue pending is in respect of **Baragwe/Thumaita/2665** only.

10. Arising from the submissions by counsels for the parties.

I find the following as the issues for determination –

**1) whether the agreement between the deceased and 1<sup>st</sup> & 2<sup>nd</sup> respondent was enforceable against the estate of the deceased.**

**2) Revocation of grant.**

**3) Whether the respondent's title deed are protected under Section 93 of the Law of Succession Act.**

11. As per the evidence tendered, the 1<sup>st</sup> and 2<sup>nd</sup> respondent duly entered into an agreement of sale of land with the deceased and paid part of the purchase price but unfortunately he passed away before the same was completed.

Thereafter, they paid the balance which was duly acknowledged by the administrators of the estate. In fact their names are indicated in the

succession proceedings as purchasers of the deceased's estate. However, there was no consent from the land control board.

### **Section 8(1) of the Land Control Act**

*An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate land control board within six months of the making of the agreement for the controlled transaction by any party thereto:*

*Provided that the High Court may, notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit.*

### **Section 7 of the Land Control Act**

*If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to section 22.*

**Musa Nyaribari Gekone and 2 Other –v- Peter Miyianda & Another (2015) eKLR** stated that:-

*“After exhaustively reviewing the background to the Land Control Act and previous Judicial pronouncement, this court has in the recent decision in **David Sironga Ole Tukai –v- Francis Arap Muge & 2 Others(2014) eKLR** reaffirmed that under Section 6 of that Act, without consent of the relevant Land Control Board, a transaction involving Agricultural land is void for all purposes.”*

12. Pursuant to the provisions of **Section 6 of the Land Control Act**, there must be consent to transfer. If no consent was obtained, the agreement of the parties became null and void after 6 months, pursuant to **Section 8 of the Land Control Act**. That agreement cannot be enforced and the only remedy for a transaction that has become null and void is for a refund, recoverable as a debt, as provided by **Section 7 of the Land Control Act**. Such an agreement does not entitle a purchaser to get land and cannot be enforced by way of specific performance.

13. Therefore in this case, the sale transaction was void for all purposes as no consent had been given by the Land Control Board within the required time and the 1<sup>st</sup> respondent is therefore only entitled to a refund of the purchase price. In a transaction where the consent of the Land Control Board was required and had not been obtained, the remedy of specific performance is not available.

So, where a person was buying land where the transaction is controlled by the **Land Control Act**, and consent was not obtained the purchaser is not entitled to get land but a refund of the purchase price subject to the prove of the claim of money paid.

Revocation of grant is provided for under

### **Section 76 of the Law of Succession Act Cap 160 Laws of Kenya.**

It provides:-

*“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—*

**a) that the proceedings to obtain the grant were defective in substance**

**b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.**

**c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.”**

14. A party seeking orders for revocation of grant must prove that the proceedings were defective in substance, that it was obtained fraudulently by making false statements and concealing matters which are material from court, or by making of untrue allegations of fact which are essential in points of law to justify the grant. This constitutes the grounds for revocation of grant.

15. Where these grounds are proved the court will revoke the grant. A party need not prove all the grounds but prove of any one of them will warrant the court to order a revocation.

16. The applicants submits that the issue is whether the proceedings were defective and whether the Magistrates court had jurisdiction. It is submitted that under **Section 48 of the Law of Succession Act Cap 160 Laws of Kenya** (to be referred to as '*the Act*') the Magistrate lacked jurisdiction as the value of the subject matter was Kshs 800,000/-.

**Section 48 of the Act** then stated that a Resident Magistrate had jurisdiction *“in respect of estates whose gross value did not exceed One Hundred Thousand Shillings”*. It is submitted that under Form P & A5-, Affidavit in support of Letters of Administrations the value of the estate was given as Kshs 800,000/-. It is submitted that the proceedings in **Succession Cause No. 199/06** were a nullify and by extension the grant which was issued. The respondent did not address the issue of jurisdiction.

17. On the issue of jurisdiction it is trite that a court must be seized of jurisdiction when dealing with a matter and where it has no jurisdiction it must down its tools. This was so held by Owners of Motor Vessel "Lilian S" –V- Clatex Oil (Kenya) Ltd 1989 KLR the Court of Appeal stated:

***“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of the proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that is without jurisdiction”.***

18. The Court went on further to state that jurisdiction is the authority which a court has to decide matters that are litigated before it and to make a decision. Further that where a court exercises jurisdiction that it does not possess, its decision amounts to nothing.

Further the Court of Appeal in Owners and Masters of the Motor Vessel Joey –v- Owners and Masters of Motor Tugs “Barbra” and Steve B (2008)eKLR. It was stated:-

***“..... it is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court..... There is no reason why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.”***

19. This court was referred to persuasive decisions in Anne Wairimu Njoroge –v- John Maguru Njoroge (2011) eKLR where Justice Serгон held that where the value of the estate was KShs 200,000/- the Principal Magistrate had no jurisdiction to entertain the cause and set aside the grant. In Omari Abud –v- Hafusa Nduta Kanyi (2014) eKLR, Justice Ngaa, where the value of the estate was KShs 150,000/- the trial Magistrate lacked jurisdiction.

20. I have considered the submission on this subject. There is no dispute that the value of the subject matter which is the estate of the deceased was KShs 800,000/-. This was a fact before the Hon. Magistrate as it was pleaded in the affidavit in support of letters of Administration Form P & A. He ought to have downed his tools as he had no jurisdiction to handle the matter. It does not matter that he made a decision. A decision made by a court without jurisdiction is null and void for all intents and purposes. A court must first be satisfied that it has jurisdiction before making one move. In line with the decision by the Court of Appeal and the persuasive decisions by my brothers which I have cited above. I hold that the Magistrate Hon. Ithuku had no jurisdiction to entertain the cause and the grant which he issued and all his consequential orders were a nullity.

21. As I have stated earlier, the claim by the respondent was a civil debt. It is my considered view that such a debt is recoverable from the estate of the deceased through suing the administrator of the estate Section 83 of the Act sets out the duties of the personal representative which includes ascertaining and paying all his debts. The claim of a civil debt does not and cannot give the creditor the status of a beneficiary. It was therefore wrong for the trial Magistrate to determine a civil claim by persons who were strangers to the estate of the deceased as they were not claiming the estate as dependants or beneficiaries. There are open avenues for the respondents to prosecute their claim and secure their rights and interests against the administrator of the estate. The succession cause was not the appropriate avenue for the respondents to enforce their claim.

22. This is what my brother Justice A. K. Ndungu was stating in the case of Monica Wangari Njiri & Others –v- Eunice Wanjiru Igamba & Another (2016) eKLR where he stated that:-

***“I don’t think that this succession proceedings are the appropriate way to challenge the title of deceased to the said properties. Their claim of trust is or ought to be the subject matter of a separate suit or proceedings”.***

23. The decision by the Learned trial Magistrate to hear and determine the respondents civil claim against the estate and determine it in a succession matter and awarding them property when they were not beneficiaries entitled to the estate was wrong and clearly made in error. The mandate of a succession court is to deal with the estate of the deceased beneficiaries and/or dependants. In deed the preamble to the Act states:-

***“An Act of Parliament to amend define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons and for purposes connected therewith and incidental thereto”***

A succession court cannot go beyond this mandate. **The Act at Section 29** defines dependants:-

**For the purposes of this Part, “dependant” means**

***“(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;***

***(b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and***

***(c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her***

death.”

25. A creditor to the estate is not a dependant and a succession court would have no mandate in dealing with his claim. A separate suit ought to be filed so that the claim can be ascertained and an order as to who should settle the claim be made.

24. It is noted that the 2<sup>nd</sup> respondent surrendered the Land parcel No. Baragwe/Thumaita/2666 back to the estate of the deceased. A consent order to that effect was recorded on 15/9/16. The respondents had deponed that they bought 1 ½ acres out of land parcel No. Baragwe/Thumaita/2669. The Confirmed Grant lists the 1<sup>st</sup> & 2<sup>nd</sup> Respondents as beneficiaries on Parcel No. 2665 & 2666. It is not clear how this came to be. It must be concluded that this was done through fraudulent dealings even after the trial court had held that the agreements were void. There were fraudulent dealings which is possibly the reason why the 2<sup>nd</sup> respondent willfully surrendered back the land Parcel No. Baragwe/Thumaita/2666 to the estate of the deceased.

25. Fraud is defined as wrongful or criminal deception intended to result in financial or personal gain. A fraudulent transaction is intended to deceive others by unjustified claims. The ruling by the trial Magistrate was that the petitioners should refund Kshs 170,000/- which did not form a debt to the estate. As for the sum of Kshs 530,000/- the learned Magistrate found that it was received by the deceased. That the sale was void. Further that the Kshs 530,000/- should be paid by the petitioners who benefited from the sale. The Magistrate stated that the money Kshs 530,000/- could not be paid out of the parcels of land of the protestors. This was in an application for review of the Judgment. It was not in the ruling by the learned Magistrate that the 1<sup>st</sup> & 2<sup>nd</sup> respondent should get land from the estate of the deceased. How they ended up getting land is clearly fraudulent and cannot be enforced. The applicant has shown that the grant was obtained fraudulently.

26. The question is whether the title deed of the 1<sup>st</sup> Applicant in respect of Land Parcel No. Baragwe/Thumaita/2665 should be cancelled and the property to revert back to the estate of the deceased.

27. The respondent relied on **Section 26(1) of the Land Registration Act, No. 3 of 2012** which provides:-

***“26.(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except –***

***(a) on the ground of fraud or misrepresentation to which the person is proved to be a party: or***

***(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.***

***(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of Registrar, shall be received in evidence in the same manner as the original.”***

29. I have stated that the registration of the applicant was fraudulent as the court never awarded her land. A registration which is tainted with fraud does not give a party a clean title. Furthermore the agreement for the sale of land was null and void and did not entitle the respondent to a portion of land. Though the respondent was a bona fide purchaser, the contract was void.

30. The sale agreement shows that the respondent bought land from land parcel No. Baragwe/Thumaita/2669 measuring 1 ½ acres. They ended up getting four acres as per the order of the trial Magistrate issued on 8/8/2008. The 1<sup>st</sup> respondent was allocated Baragwe/Thumaita/2665 and Baragwe/Thumaita/2666 to the 2<sup>nd</sup> respondent. This in effect disinherited the applicant and 1<sup>st</sup> Administrator of a large share of their entitlement of the deceased estate. Where the beneficiaries are disinherited it shows that the proceedings to obtain the grant were defective in substance as they failed to consider their entitlement in the estate. Where proceedings are proved to have been defective, the court will order the revocation of the resultant grant.

31. I will now address the issue as to whether the 1<sup>st</sup> Respondent’s interest is protected under **Section 93(1) of the Law of Succession Act**. The 2<sup>nd</sup> Respondent relinquished his interest in Land parcel No. 2666. The land should therefore revert back to the estate of the deceased for distribution to his beneficiaries. **Section 93 (1) of the Law of Succession Act** provides:-

***“(1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”***

32. The court has been referred to various persuasive decisions i.e **In the matter of the Estate of Josia Mantu alias Mantu Mugwika (deceased) 55/16** where Justice Limo held:-

***”it is clear from the provisions of Section 93 as it is illustrated by the above authorities that the protester’s interest on Mwimbi/Chogoria/5089 is indeed shielded by the notwithstanding the orders issued by the court to revoke and cancel the resultant titles including Mwimbi/Chogoria/5089. It is***

***instructive to note that the same court’s cancellation order appears and did not affect parcel No. Mwimbi/Chogoria/5088 and for the same reason in my view. The section protects an innocent purchaser for value but certainly the protection does not extend to***

*fraudulent transactions and I have not found any element of fraud in the transaction between the caveator herein and the 1<sup>st</sup> petitioner.”*

33. In the matter of the *Estate of Teresia Nyanchero Matundura (deceased) Succ Cause No. 62/09* Justice Sitati. It was stated that **Section 93 of the Law of succession Act** shields an innocent purchaser for value of a deceased’s estate .....

There are other authorities cited which I have considered. The Court of Appeal in *Jacinta Wanja Kamau –v- Rosemary Wanjiru Wanyoike and Another 2013 eKLR* stated:-

*“Before the appellant could seek protection as a purchaser under Section 93 of the Act, she had first to prove that she is a purchaser. The Judge further held that “the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties are protected by the provisions of Section 93 of Law of Succession Act because they have proved from the presented Agreement for Sale they are bona fide purchasers for value without notice of defective title, in that they presumed the Administrators had the lawful authority and consents from all beneficiaries to sell the said properties were legally transferred to them and titles issued.”*

34. **Section 93 of the Law of Succession Act** protects an innocent purchaser for value of a deceased’s estate. The transaction must be free from allegations of fraud and be based on an enforceable contract. The provision is not meant to validate title deeds obtained through fraud and void contracts. It is expected that for a purchaser of value without notice **Section 93 of the Act** will come to the aid of such purchaser.

The Court of Appeal while considering the Section has stated:-

**Musa Nyaribari Gekone & 2 others v Peter Miyienda & another [2015] eKLR**

The Court of Appeal in dealing with the said **Section 93(1)** stated;

**In Jecinta Wanja Kamau vs. Rosemary Wanjiru Wanyoike and Another [2013] eKLR** where the appellant therein unsuccessfully sought protection under section 93, this Court sitting in Nyeri stated:

*“Before the appellant could seek protection as a purchaser under Section 93 of the Act she had first to prove that she is a purchaser. In this case, there was no prima facie evidence that she was a purchaser. In any case, and as provided by Section 82 (b) (II) of the Act, it would have been illegal for Beatrice Njeri Magondi to sell the land before the confirmation of the grant.”*

The Court of Appeal considered the holding in

**Re Estate of Christopher Jude Adela (Deceased) [2009] eKLR**, K.H. Rawal, J (as she then was) had this to say in reference to Section 93 of the Law of Succession Act;

*“The correct reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated. Reading these provisions in the manner will be commensurate with provisions of section 23 of the RTA (Cap 281) or any other provisions of law regarding proprietorship of an immovable property. It shall be a very weak or unfair system of law if it gives a Carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal action prejudicing the interests and rights or right beneficiaries of the estate.*

*In short, I do not agree that section 93 of the Act prohibits the discretion of the court to invalidate a fraudulent action by a personal representative.”*

35. The Court of Appeal further held that while under **Section 93 of the Law of Succession Act**, a revocation or variation does not invalidate a transfer by a personal representative such considerations such as the disposal of the property in contravention of confirmed grant and having found evidence of fraud the Judge was of the correct view that **Section 93 of the Law of Succession Act** did not afford the appellant protection.

36. In this case, the 1<sup>st</sup> respondent entered into a sale agreement with the deceased unfortunately he died before the sale was completed. She paid the balance of the purchase price on 19/11/2006 to the administrators of the estate and their names were indicated in the succession proceedings as purchasers of the deceased’s estate. The grant was confirmed thereafter in 2009 whereby she was awarded **Baragwe/Thumaita/2665** as an heir of the estate.

37. The administrators herein proceeded to accept the balance of the purchase price before the grant was confirmed in their names therefore their action was illegal since they did not have the capacity to sell the land and/or complete the sale transaction.

38. The grant which was confirmed indicated that the 1<sup>st</sup> respondent was allocated land Parcel No. Baragwi/Thumaita/2665 contrary to the Judgment delivered on 2/11/07 and reviewed on 1/8/08 which stated that the sale was void and 1<sup>st</sup> and 2<sup>nd</sup> respondents were entitled to a refund upon prove that the money was paid. The grant confirmed shows the 1<sup>st</sup> respondent as well as the 2<sup>nd</sup> respondent were listed as heirs. This was contrary to the judgment of the Learned Magistrate and the ruling on the application for

review. The grant was signed by the trial Magistrate and yet it was at variance with his Judgment and his ruling. It is not clear how this came to be. I find that the title issued to the 1<sup>st</sup> Respondent was obtained fraudulently by indicating that the respondents were heirs. The 2<sup>nd</sup> respondent owned up and surrendered back his title to the estate. The title of 1<sup>st</sup> respondent cannot be protected under **Section 93 of the Act** in view of the fraud, the variance of the grant with the Judgment and the ruling of the trial Magistrate and the fact that the petitioners received the balance of the purchase price before the grant was confirmed.

39. This application was supported by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup>, 7<sup>th</sup>, & 8<sup>th</sup> respondents and the interested party.

#### **40. In conclusion**

I find that the application has merits. I allow it and order that:

- (i) *The grant of Letters of Administration issued on 16/9/2008 is revoked.*
- (ii) *The Land Registrar Kirinyaga County is ordered to cancel the Certificate of titles for Land parcel No. Baragwe/Thumaita/2665 in the name of Rose Wanjiru Mucira and No. Baragwe/Thumaita/2666 in the name of Joseph Muriithi Njoka and leave the name of proprietor as Ngore Ndinwa the deceased herein.*
- (iii) *The 1<sup>st</sup> & 2<sup>nd</sup> respondents to surrender the said titles to the Land Registrar Kirinyaga County for cancellation.*
- (iv) *The Learned trial Magistrate had no jurisdiction to deal with the succession cause and the proceedings, the Judgment and Rulings were a nullity and are set aside.*
- (v) *The cause will proceed before the Chief Magistrate's Court Kerugoya for hearing and determination.*
- (vi) *Each party will bear its own costs.*

Dated at Kerugoya this 14<sup>th</sup> day of June 2019.

L. W. GITARI

JUDGE