



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 912 OF 1997**

**IN THE MATTER OF THE ESTATE OF MBUGUA MAGIRI alias KIARIE MAGIRI  
(DECEASED)**

**RULING**

1. There are three applications for determination. They are dated 28<sup>th</sup> April 2014, 30<sup>th</sup> April 2015 and 16<sup>th</sup> March 2016.
2. The Motion dated 28<sup>th</sup> April 2014, filed herein on 11<sup>th</sup> May 2015, is at the instance of Lucy Waithera Mbugua and George Gitau Waruhari. They seek that they be joined in the proceedings as interested parties. Their case is that they had acquired an interest in the subject property upon sale in 2007/2008, and therefore they have an interest in the matter that justifies their joinder as parties to these proceedings. They have attached copies of the sale agreements and of the title documents to those properties after they were transferred to their names.
3. There is a response to the application by the persons named in the Motion as respondents. They are the beneficiaries of the estate of the deceased. The affidavit in reply is sworn by Teresa Wamiti Mgongo, who is one of the administrators of the estate. She avers that the estate has already been shared out as per the orders of 7<sup>th</sup> October 2014. She asserts that the respondent beneficiaries were not privy to the agreements where the applicants purported to acquire the assets as alleged. She states that Rawal J. had on 14<sup>th</sup> July 2008 revoked the grant and certificate of confirmation of grant dated 13<sup>th</sup> February 2008 which would have been the basis of the alleged sales. She avers that the applicants were party to the proceedings when the grant and certificate of confirmation thereof was revoked. She states that the applicants are not survivors of the deceased and therefore they are not entitled to be enjoined as parties to the probate cause. She has attached a copy of the ruling made by Rawal J. on 14<sup>th</sup> July 2008 where the grant and the certificate of confirmation of grant dated 13<sup>th</sup> February 1997 were revoked.
4. The application dated 30<sup>th</sup> April 2015 was filed by Peter Njoroge Kung'u and Susan Njeri Macharia. They seek to be joined in the proceedings as interested parties. They claim to have had bought a portion of the estate property from George Gitau Waruhari, an administrator, named herein as respondent, sometime on 11<sup>th</sup> November 2008. The alleged respondent had allegedly bought the property from the estate on 6<sup>th</sup> June 2007. The respondent then delivered vacant possession of the property to the applicants who took possession and began to utilize it. The applicants have attached copies of the sale agreements through which they allegedly acquired an interest in the property, and also copies of the titles in their names.
5. The response to the application takes the form of an affidavit sworn by Teresa Wamite Mgongo on 23<sup>rd</sup> February 2016. She avers that the applicants had purported to acquire an interest in the estate through a fraudulent process spearheaded by her co-administrator. As at the time no one had taken out proper letters

of administration. She asserts that the family is still in possession contrary to the allegation by the applicants that they are the ones in occupation thereof.

6. The application dated 18<sup>th</sup> March 2016 is by another purchaser of a portion of the estate. She is Alice Wahu Kuria. She avers that the property was sold to her by one of the persons who had acquired it in 1997 from the administrators. She states that she has a suit pending before the Environment and Land Court over the matter. The reply to the application is by Teresa Wamite Mgongo, one of the administrators, who aver that all the transactions carried out in 1997 were nullified when the grant then in force was revoked.

7. I have taken time to peruse the court file herein in order to understand background to the dispute. I must confess that the file is in a deplorable condition, as it appears that there are proceedings and pleadings that are missing.

8. The deceased died on 5<sup>th</sup> April 1976. Representation to his estate was sought by Michael Ngugi Mbugua in Kiambu SRMCS No. 546 of 1996. A grant of letters of administration intestate was made to the petitioner by the lower court on 24<sup>th</sup> January 1997. The said grant was accordingly confirmed on 13<sup>th</sup> February 1997, wherein the two assets of the estate, that is to say Kiambaa/Thimbigua/320 and Kiambaa/Muchatha/T. 382, devolved absolutely upon the administrator, Michael Ngugi Mbugua.

9. On 2<sup>nd</sup> May 1997, a summons, dated 28<sup>th</sup> April 1997, was lodged in this cause for the revocation of the grant made and confirmed in Kiambu SRMCS No. 546 of 1996. The said summons was at the instance of John Magiri Mbugua, who alleged that the grant in Kiambu SRMCS No. 546 of 1996 was obtained without his consent and that of his other brother who was then based abroad. He complained that the grant was confirmed in a hurry and that he only came to learn that there had been succession proceedings going on when surveyors came to the land to subdivide it.

10. The application dated 28<sup>th</sup> April 1997 was resolved on 14<sup>th</sup> July 2008 when the court delivered a ruling in the following terms –

*'I have seen the facts of the case. It is obvious that the one of the administrators who is the present and the other adm. being deceased I revoke the grant of representation as well as cert. of confirmation dated 13<sup>th</sup> February 1997 and granted only to Michael Ngugi Mbugua who concedes that there are other children of the dec.*

*I direct that a fresh grant be issued in the names of John Kagiri Mbugua and Michael Chege Mbugua.*

*The new administrators to file summons for confirmation within 21 days from the date of issuance of the fresh grant. On failure to get consent of all the parties' one of the adm. to file the said summons and the other to file protest.'*

11. On 21<sup>st</sup> October 2008 an order was made marking as withdrawn a summons for confirmation of grant dated 26<sup>th</sup> February 2008 and it was directed that a fresh one be filed. A fresh application for confirmation of grant dated 20<sup>th</sup> November 2008 was filed, but the same was dismissed on 23<sup>rd</sup> February 2009. One of the administrators died and orders were made on 28<sup>th</sup> October 2013 to have him substituted and the grant of 13<sup>th</sup> February 1997, as amended on 28<sup>th</sup> October 2008, was confirmed on 7<sup>th</sup> October 2014. It would appear it is the confirmation of the said grant that has provoked the applications the subject of this ruling.

12. It is uncontested that after the original grant was confirmed on 13<sup>th</sup> February 1997, the administrator in whose favour the same was confirmed proceeded to subdivide the property and sell it to third parties. The sales to the third parties then provoked the summons for revocation of grant which culminated in the orders made on 14<sup>th</sup> July 2008 where the grant of 24<sup>th</sup> January 1997 was revoked and the certificate of its

confirmation dated 13<sup>th</sup> February 1997 cancelled. The proceedings conducted and the orders made after 14<sup>th</sup> July 2008 and before 28<sup>th</sup> October 2013 had the purchasers in mind for some of them had filed papers to protect the interests that they believed they had acquired after they had allegedly bought portions of the property. It would appear that they were not involved in the proceedings conducted on 28<sup>th</sup> October 2013 and 7<sup>th</sup> October 2014, and it would appear that that is what has prompted them to move the court for their joinder as interested parties.

13. I seriously entertain doubts as to whether they have any interest in the estate worth protecting in view of the orders made on 14<sup>th</sup> July 2008, but I would rather leave that to the court that will eventually have to grapple with that issue. I am more concerned that the said people, who appear to be affected by the orders made on 7<sup>th</sup> October 2014, did not appear to have been given the opportunity to be heard whether or not they had valid claims. I am usually reluctant to make orders to allow joinder of interested parties in probate proceedings as I do not believe that there is sufficient legal framework for grant of such orders given the infrastructure of probate proceedings, but I am persuaded that there could be a case here for making orders in that direction.

14. In my opinion, the applications dated 28<sup>th</sup> April 2014, 30<sup>th</sup> April 2015 and 16<sup>th</sup> March 2016 are available for grant of the orders sought therein, and I do hereby allow the said applications but limited to the joinder of the applicants as interested parties. Upon their joinder as such, the applicants shall be at liberty to move the court appropriately for such orders as they may desire. In the meantime the distribution of the assets herein, as per the orders made on 7<sup>th</sup> October 2014, is hereby suspended for thirty (30) days to allow the applicants herein move the court appropriately, if they are so minded.

15. The estate comprises of property situated within Kiambaa of Kiambu County, consequently, the matter shall be transferred to the High Court of Kenya at Kiambu for disposal.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF FEBRUARY, 2017.**

**W. MUSYOKA**

**JUDGE**