



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**SUCCESSION CAUSE NO 547 OF 2008**  
**IN THE ESTATE OF THERU NDIRANGU (DECEASED)**  
**JOHN KARAGO NDIRANGU**  
**JOSEPH WANG'OMBE NDIRANGU**  
**ANTONY KARURI NDIRANGU.....APPLICANTS**  
**VS**  
**SEBASTIAN WACHIRA NDIRANGU.....RESPONDENT**

**RULING**

1. The application before me is a Summons General dated 24<sup>th</sup> October 2016 brought under Rule 73 of the P&A Rules for orders;

**1. That this court do stay any further proceedings in this cause pending the hearing and determination of Nyeri Court of Appeal Civil Appeal no. 29 of 2013**

**2. That costs be in the cause**

2.The application is supported by the affidavit sworn by JOHN KARAGO NDIRANGU, his statement dated 1<sup>st</sup> November 2016, and submissions dated on the 17<sup>th</sup> April 2010.

3.The application is opposed vide the replying affidavit of SEBASTIAN WACHIRA NDIRANGU, and the submissions filed on the 17<sup>th</sup> March 2017.

4.Rule 73 of the Probate and Administration Rules provides the following,

**“Saving of inherent powers of court**

**Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”**

4.Briefly the parties herein are the sons of THERU W/O NDIRANGU. She had three co wives. Their husband NDIRANGU WANG'OMBE died in 1964 leaving a parcel of land AGUTHI/GATITU/27. The

issue of succession began in 1971 and 1976 the matter was finalised before J.S Patel SRM (as he then was). The land was shared equally among the four wives of Ndirangu Wang'ombe. Theru Ndirangu got parcels two parcels of land, LR no. AGUTHI /GATITU/1588 and AGUTHI/GATITU/1592.

5. Theru Ndirangu died in 2006 hence this succession cause.

6. There is a summons for confirmation of grant filed on 1<sup>st</sup> April 2016 which identifies the beneficiaries and their specific shares to AGUTHI/GATITU/1588 and AGUTHI/GATITU/1592. There is an affidavit of protest filed on 9<sup>th</sup> June 2016 by the three applicants. Their protest is that some time in 1981, the land Registrar in cahoots with one Francis Ndirangu, re - subdivided the land AGUTHI/GATITU/27. That in protest their mother Theru Ndirangu moved to the High Court in HCCA no 5 of 2002. This was dismissed by Justice Ombwayo in his judgement of 20th September 2013. Against this judgment the applicants filed Civil Appeal no 29 of 2013 in the Court of Appeal. The orders sought are to enable them pursue the said appeal.

7. I have perused all the Applicants' affidavit, his statement and submissions. I have also perused the replying affidavit and submissions by the respondent. I have also perused the court file.

8. To support his application under rule 73 of the Probate and Administration Rules, the applicant is expected to establish either of two things; that any further proceedings in this case before the appeal is heard will derail the ends of justice, and if not so, such proceedings will be an abuse of the process of court.

9. What is pending before this court and the subject of the application for stay, is the applicants protest against the respondent's application for confirmation of grant.

10. The crux of the protest is that beneficiaries have not agreed on the mode of distribution as set out by the petitioner/ respondent in the summons for confirmation of the certificate of grant. Never the less, going by the record, this issue was clearly settled by Justice Sergon in his Judgment of 11<sup>th</sup> June 2010. The Judge indicates that the protesters (the applicants herein) submitted before him that the estate of Theru Ndirangu should be shared equally. The Judge agreed with them saying

**“After careful consideration of the rival submissions I am persuaded by the submissions of the Protester that the Estate Assets be shared in equal measures between the beneficiaries”.**

10. Hon Justice Sergon in his judgment also suspended the confirmation of the grant pending the determination of the liabilities against f the Estate of Theru Ndirangu.

11. There is no appeal against Hon Justice Sergon's decision.

12. Secondly there are the allegations of a 1981 subdivision of Aguthi/Gatitu/27 done fraudulently by one of the beneficiaries with the collusion of the District Land Registrar one Ms. Kiagayu, and contrary to the plans by the Nyeri Municipal Council of 20<sup>th</sup> July 1977. It is alleged that these shenanigans affected the overall estate of Theru Ndirangu which was expected to be shared among the beneficiaries, and which is subject of the summons for confirmation of the certificate of grant herein.

13. These are serious allegations against a civil servant but there is nothing on record to show that the said Land Registrar and the Nyeri Municipal Council have either been enjoined in these causes or been called upon to account or explain their actions in the matter if at all. These are issues that have not been canvassed before this court. Dealing with them would not amount to an abuse of the process of court or stand in the way of justice.

14. In my view it will be an abuse of the court process to allow parties to deal with issues in this matter piece meal. This matter began in 1971. Surely litigation must come to an end as at some point. The longer the matter stays in court the more the issues accumulate. In my humble view the ends of Justice

will be served if all the issues pending before the High Court are dealt with and finalized, and then if the applicants or other parties are dissatisfied they can take all the issues on appeal.

15. Further it is my view that the hearing and determination of the pending protest will not defeat the ends of justice or amount to an abuse of the process of court. It will in fact it will serve the interests of justice.

16. I find therefor that the application before me is not merited and is dismissed.

17. Being a family matter there will be no orders as to costs.

Dated, signed and delivered at Nyeri this 5<sup>th</sup> Day of May 2017.

**TERESIA MATHEKA**

**JUDGE**

In the presence of;

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Court Assistant .....Teresia