



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 285 OF 2005**

*(IN THE MATTER OF THE ESTATE OF MIRIGO KARUIRU ALIAS LUCY MIRIGO KARUIRU  
(DECEASED)*

**GEOFFREY NDEGWA KARUIRU.....APPLICANT**

**VERSUS**

**PETER KARUIRU.....RESPONDENT/PROTESTOR**

**RULING**

The deceased Mirigo Karuiru alias Lucy Mirigo Karuiru died intestate on 23<sup>rd</sup> September, 1983; the grant of letters of administration intestate to her estate was made to the applicant, Geoffrey Ndegwa Karuiru on 25<sup>th</sup> July, 1986. On 16<sup>th</sup> day of October, 2008, this grant was revoked and a fresh one was made in the joint names of both the applicant and the respondent. In the same order, the court issued a prohibition over land parcels numbers, Nyeri/Island farm/250 and 251 pending further orders of this court.

On 28<sup>th</sup> November, 2008 the applicant herein filed a summons for confirmation of grant of the even date seeking to have the grant confirmed. Not being satisfied with that summons, the respondent protested against it and filed an affidavit of protest sworn on 26<sup>th</sup> January, 2009 and filed in court on the following day. In a considered judgment delivered on 23<sup>rd</sup> August, 2008 the protest was dismissed and the grant confirmed at the same time.

It is against this background that the applicant now seeks for an order that the court vacates its orders issued on 29<sup>th</sup> October, 2008 in view of the subsequent developments following the issue of that order; in particular, the applicant is seeking the lifting of the order of prohibition issued and registered against land parcels numbers, **Nyeri/Island farm/250 and 251** to pave way for the devolution or transmission of the estate. The application was brought by way of a summons in general form under **section 76** of the **Law of Succession Act** and **rule 44** of the **Probate and Administration Rules**. It is supported by an affidavit sworn on 10<sup>th</sup> April, 2014 by the applicant himself.

In response to the summons, the respondent swore an affidavit on 4<sup>th</sup> November, 2014 in which is basically challenging the confirmation of grant; indeed he has sworn that since is not satisfied with that confirmation, he has filed in this court an application for review of the orders dismissing his protest and confirming the grant. The respondent has described the judgment in which those orders were decreed as “unconstitutional”.

When the applicant’s summons came up for hearing on 17<sup>th</sup> November, 2014, all the respondent said in response to the applicant’s submissions was that he wanted more time to appeal or take any other appropriate action against the judgment in which his protest was dismissed and the grant confirmed.

I have considered the applicant’s summons and the response thereto. The respondent’s reasons for opposing the application are issues which were raised or ought to have been raised during the confirmation proceedings. The court considered these issues and delivered its judgment dismissing the protest and confirming the grant. If the respondent was aggrieved with the court’s judgment he ought to

have appealed against it.

Although the respondent sought more time to appeal against the judgment, the court notes that the judgment was delivered more than six years ago and no explanation was offered why an appeal has not been filed within this period. In any event, the respondent filed an application for review of the judgment; for whatever it is worth, unless that application for review is withdrawn I cannot see how an appeal would be a viable option when the application is still pending.

I also note that although the application for review was filed way back in October, 2013 it has neither been fixed for hearing nor has the respondent taken any action to have it heard or disposed of. Without prejudging it, it is an application that was probably filed without any conviction in the chances of its success.

Considering that the grant has been issued and confirmed, and considering that so far the confirmation order has not been set aside, I am persuaded that the applicant's summons dated 10<sup>th</sup> April, 2014 is merited and it ought to be allowed; consequently, the order of prohibition issued on 29<sup>th</sup> October, 2008 prohibiting any transactions on land parcels numbers **Nyeri/Island Farm/250 and 251** is hereby vacated and/or set aside. The costs of the application shall be in the cause.

**Dated, signed and delivered in open court this 2<sup>nd</sup> February, 2015**

Ngaah Jairus

**JUDGE**