



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 863 OF 2008**

**IN THE MATTER OF THE ESTATE OF MUCHENDU BONGWE (DECEASED)**

**JAMES MWANGANU MWANGI**

**JUDITH WANJIRU MWANGANU.....APPLICANT**

**VERSUS**

**PETER KAMUNYU MUCHENDU.....RESPONDENT**

**RULING**

Counsel for the Applicant in this case asked the Court for orders based on the application filed on 30<sup>th</sup> July, 2015 and despite service to the Respondent he has not attended Court or filed a Replying Affidavit. Counsel for the Applicant informed Court that the Applicants continue to be harassed on the suit property by the Respondent.

The Respondent has resorted to using the Title deed to obtain a loan from the bank. Surveyors and valuers have been to the scene/suit property and the land will be charged to the bank. The title deed will be surrendered to the bank.

The Applicants will be left destitute. The Applicants have complied with the Court order and deposited the balance of the purchase price of the land in Court. The Respondent has not indicated to Court the position with regard to the seller, Samuel Nyutu, his brother, who allegedly disappeared from home and cannot be found. He was to lodge a report with police. The Respondent has declined to comply with the Court orders of this Court or apply for review or appeal or offer any explanation for his absence in court or challenges in complying with the court orders. The Respondent's Counsel informed this court that he was not able to file a Replying Affidavit as he could not reach his client for instructions. He sought an adjournment.

The matter is not adjourned today, the Respondent is deliberately avoiding coming to Court. The Court orders further that the application of 8<sup>th</sup> July, 2015 is allowed and the Ruling of 30<sup>th</sup> April 2015 is amended in the following terms;

1. The Applicant is allowed to build a semi permanent house on the purchased land for the family to settle in.
2. The Respondent to come to Court for an order to collect the balance of the Purchase Price that

was deposited by the applicants as per the Court Order of 30<sup>th</sup> April 2015 and he allows the Applicants free use and access to the suit property.

3. The Title deed Muguga/Jet Scheme/152 in the names of;

- i. Paul Kimani Muchendu,
- ii. Teresiah Wanjiru Ngethe,
- iii. Martin Kamunye Muchendu,
- iv. John Njoroge Muchendu,
- v. Jacinta Wairimu Ndungu, remains valid.

4. The Land Registrar Kiambu Lands Office to revoke the Title deed for Muguga/Jet Scheme/152 in the name of;

- i. Peter Kamonyo Muchendu
- ii. John Njoroge Muchendu holding in trust for Samuel Nyutu. The said Title is not subject to security for any loan in any bank with regard to the suit property 0.75 acres for Sammy Nyutu held by John Njoroge and Peter Kamunyo.

5. The applicant to proceed with the transfer of the property **MUGUGA/JETSCHEME/152** of  $\frac{3}{4}$  acre and the Deputy Registrar Family Division to sign transfer documents.

6. Any party is at liberty to apply.

**READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2015**

**M. MUIGAI**

**JUDGE**

***In the presence of:***