

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 542 OF 1997

IN THE MATTER OF THE ESTATE OF MARATA GACHOKI KANGUDA (DECEASED)

STEPHEN MAINA KAGUNDA.....PETITIONER/APPLICANT

VERSUS

STEPHEN KINYUA KAGUNDA.....OBJECTOR/RESPONDENT

RULING

The Administrator has by her Notice of Motion dated 6th December 2012 and filed on 7th December 2012 sought *inter alia* orders that -

1. Stephen Kinyua Kagunda, Samuel Muriithi Wachorongi and Francis Warutumo Gitonga be restrained from entering into, cultivating, disposing off or in any way dealing with the parcels of land known as Marmanet/Melwa Block 1/2768, 2769, 2770 and 2041 and
2. Said letters be cancelled and registration be made per the Confirmed Grant.

The Application was opposed by Stephen Kinyua Kagunda per his Replying Affidavit sworn on 17th April 2012, and filed on 19th April 2012 and in which he depones *inter alia* that the land subject of the objection (*which was dismissed*) was bequeathed to him by way of gift by his late mother, before her death and that as he had the land registered in his name, he had sub-divided it, and sold parts of the sub-division to Daniel Muriithi Wachorongi and Francis Warutumo Gitonga (*herein called the Interested Parties*).

The Grant herein was confirmed by orders of court and a Certificate of Confirmation made and issued on 23rd September 2011, in which the parcel of land known as MARMANET/MELWA/BLOCK 1/2040, along with other parcels, (*Block 2040 – Block 2041*) were transmitted to the Applicant herein. However following an official search in the Land Registry, she discovered that the said parcel of land had been registered in the name of the Objector, who in turn had had it sub-divided and sold to the Interested Parties who were not served with the application herein.

As the Interested Parties were not served, and have acquired titles to the respective parcels it would be contrary to the rules of natural justice to cancel their titles without giving them the right to be heard.

In the circumstances, I will allow the application in terms of prayer (ii) restraining the said Stephen Kinyua Objector and Interested Parties from any further dealing with the land by way of sale only, pending the determination of the question how the Respondent obtained title to the parcel known as MARMANET/MELWA/BLOCK 1/2040.

I direct counsel to take early dates in January/February 2014 for the determination of the above issue. I also direct the Applicants counsel to serve Interested Parties with the Notice of Motion of 6th December 2011, and the orders herein, together with the hearing date designated by the registry.

I direct the costs herein abide the determination of the further question of how the Objector obtained title to the said parcel of land, and the acquisition by the Interested Parties of their sub-divisions of said parcel.

It is so ordered.

Dated, signed and delivered at Nakuru this 7th day of November, 2013

M. J. ANYARA EMUKULE

JUDGE