

**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 870 OF 1991**

**IN THE MATTER OF THE ESTATE OF SAMUEL MWERI**

**MACHARIA - DECEASED**

**CATHERINE WANJIRA GATOGO .....**

**APPLICANT**

**RULING**

1. **Samuel Mweri Macharia** died on 29<sup>th</sup> September, 1988. Grant of Letters of Administration intestate were issued to Bertha Wanjiru Mweri and Edward Ndirangu on 7<sup>th</sup> October, 1991. The Grant was confirmed and 28<sup>th</sup> July, 2000.
2. The matter has been reactivated via an application dated 14<sup>th</sup> April, 2025 filed by Catherine Wanjira Gatogo (Applicant) for revocation of the Grant. Alongside that, she has also filed a summons application of the same

date, accompanied by a supporting affidavit sworn by the Applicant.

3. The summons application seeks the following orders;

*i. **Spent***

*ii. **That this honourable court be pleased to issue a temporary order of injunction against the administrator (s) or any other beneficiary from sub-dividing, selling or in any manner dealing with all those properties known as Laikipia/Nyahururu/322, Laikipia/Nyahururu/264, Laikipia/Nyahururu/320, Laikipia/Nyahururu/31 or any subsequent subdivision resulting to Laikipia/Nyahururu/7981 to 7989 pending the hearing and determination of this application and/or the application for revocation and annulment of the grant.***

4. The application is opposed by James Mukure Mweri (Respondent), who is a beneficiary of the estate.

5. There is no response from the administrators.
6. The Applicant argues that the administrators and the beneficiaries are engaged in wanton waste of the estate by subdividing and selling the assets without considering her interests and those of the other daughters of the deceased.
7. The Respondent argues that the estate was already distributed a long time ago and that although some beneficiaries were left out in the distribution, it was as a result of agreement between all beneficiaries and in line with the wishes of the deceased.
8. He further stated that there was litigation in the Environment and Land Court, as well as in the Court of Appeal, concerning a portion of the estate allocated to him. He had received favourable orders from both Courts regarding his registration, use, and subsequent right to sell portion of the property Laikipia/Nyahururu/7982, which is a subdivision.
9. Both parties have filed their submissions, which I have reviewed.

10. The issue for determination is whether the Court should issue a temporary injunction concerning the assets of the estate while awaiting the hearing and determination of the application for revocation of the Grant.
11. I have reviewed the annexures that show the litigation that has taken place in the **Environment and Land Court at Nyahururu, Case No. 11 of 2018** and specifically the Judgment of the Court delivered on 24<sup>th</sup> March, 2022. The judgment addresses parcels of land that were a subdivision of a consolidated parcel (that consolidated the parcels in the Certificate of Confirmation of Grant, and thereafter there was a subdivision into seven portions).
12. The case went all the way to the Court of Appeal - **Court of Appeal at Nyeri, Civil Appeal No. E013 of 2023**, highlighting profound implications for the parcels. The decisions are in favour of the Respondent (James).
13. The application for revocation has not been heard, and it is also contested. The court acknowledges the substantial changes and complex implications that have

arisen post the confirmation of the grant and from the recent Court decisions highlighted above. These changes have notably affected the status of the properties involved, including their ownership.

14. The principles of granting an injunction were set out in the case **Giella vs. Cassman Brown & Co. Ltd (1973) EA**. They require demonstrating a strong *prima facie* case with a probability of success, a risk of irreparable harm if the injunction is denied, and that the balance of convenience favours the Applicant.

15. The Applicant has failed to establish a *prima facie* case that suggests a reasonable likelihood of success in her claim. Additionally, there is no clear evidence of any risk of irreparable harm she may face. Furthermore, the overall balance of convenience does not favour her position in this matter.

16. In light of the foregoing, the application dated 14<sup>th</sup> April, 2025 is dismissed. Costs shall be in the cause.

17. It is so ordered.

**DATED, DELIVERED and SIGNED at NAIROBI** through the Microsoft Teams Online Platform on this **13<sup>TH</sup>** day of **FEBRUARY, 2026.**

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**C. KENDAGOR**

**JUDGE**

**In the presence of:**

Court Assistant: Beryl

Ms Maina, Advocate for Applicant

Ms Wahome ,Advocate for Respondent