



REPUBLIC OF KENYA



Imani Maai-Mahiu Self Help Group & another v Njogu & another (Civil Application E147 of 2021) [2022] KECA 2 (KLR) (21 January 2022) (Ruling)

Neutral citation: [2022] KECA 2 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E147 OF 2021
DK MUSINGA, AK MURGOR & KI LAIBUTA, JJA
JANUARY 21, 2022**

BETWEEN

IMANI MAAL-MAHIU SELF HELP GROUP 1ST APPLICANT

JOHN NJENGA NJOGU 2ND APPLICANT

AND

LUCY NJERI NJOGU 1ST RESPONDENT

GEORGE GATONYE NJOGU 2ND RESPONDENT

(An application for stay of execution of the Ruling of the High Court of Kenya at Naivasha (Mwongo, J.) delivered on 28th April 2021 in H.C. Misc. Succ. Appl. No. 4 of 2019)

RULING

1. The applicants' Notice of Motion dated 11th May 2021 seeks stay of execution of the Ruling delivered on 28th April 2021 by Mwongo, J. in Misc. Succession Application No. 4 of 2019 in the High Court at Naivasha in which the learned judge ordered cancellation of the 1st applicant's Title Deed for L.R No. Longonot/Kijabe Block 4/5 ("the suit property") and, further, directed that the Title Deed reverts to the 2nd applicant's deceased's father.
2. The 1st applicant states that she purchased the suit property, which measures 14 acres, from the 2nd applicant, and the parcel of land was transferred and the Title Deed issued to her on 29th May 2014. The 2nd applicant was at the time the Administrator of his deceased father's estate, and the 1st applicant paid the full purchase price of Kshs. 3,480,000 for the suit property and thereafter subdivided it into plots which are occupied by the 1st applicant's 94 members.
3. The applicants submitted that they have an arguable appeal; that the 1st applicant lawfully purchased the suit property; and that, under section 93(1) of the *Law of Succession Act*, the transaction was lawful and is protected. They further submitted that if the orders sought are not granted, the intended appeal,



if successful, will be rendered nugatory because the suit property shall be distributed to the beneficiaries of the deceased's estate and the substratum of the intended appeal will cease to exist.

4. The respondents opposed the application. They argued that the 1st applicant purchased the suit land from John Njenga Njogu, the 2nd applicant, who had obtained it through a grant that was subsequently revoked in Naivasha High Court Succession Cause No. 55 of 2014. Thereafter, the High Court ordered cancellation of the Title Deed. In their view, the registration of the 1st applicant as the proprietor of the suit land was fraudulent since the grant had been obtained illegally.
5. Lastly, the respondents submitted that the intended appeal shall not be rendered nugatory if the orders sought are not granted since the 1st applicant can lodge a claim against the 2nd applicant.
6. We have considered the application. It is now well established that in an application of this nature an applicant must satisfy this Court that the appeal or intended appeal is arguable, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR*. Even one arguable ground of appeal will suffice.
7. The applicants have submitted that, pursuant to section 93(1) of the *Law of Succession Act*, the sale and transfer of the suit property was not only lawful but protected, notwithstanding the subsequent revocation of the grant of representation that had been issued to the 2nd respondent. The said section provides as follows:

“ 93 (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”

8. We are satisfied that this is an arguable ground of appeal. We need not say much at this juncture lest we embarrass the bench that shall eventually hear the appeal.
9. On the nugatory aspect, we agree with the applicants that unless the orders sought are granted, the appeal, if successful, will be rendered nugatory because the suit property shall be distributed to the beneficiaries of the deceased's estate before the appeal is heard and determined.
10. Consequently, we grant the orders as sought by the applicants. The costs of the application shall be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JANUARY, 2022.

D. K. MUSINGA, (P)

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original



Signed

DEPUTY REGISTRAR

