



**REPUBLIC OF KENYA**

**High Court at Kerugoya**

**Miscellaneous 43 of 2013**

**FRANCIS NDUNGU GITAU .....1<sup>ST</sup> APPLICANT**

**JOHN NDUNGU GITAU .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE DISTRICT LAND REGISTRAR**

**THIKA DISTRICT LAND REGISTRY .....RESPONDENT**

**RULING**

By their Notice of Motion dated 22<sup>nd</sup> January 2013 the applicants herein seek orders that the respondent herein issued them with certified copies of the transfer documents registered at the Lands registry for transfer of parcel number NDARUGU/GACHARAGE/794 from Gitau Kamau to Gakuu Kibuthu, all documents evidencing combination of NDARUGU/GACHARAGE/794 and

NDARUGU/GACHARAGE/205 giving rise to NDARUGU/GACHARAGE/796 and/or any other documents relating to the transfer and/or combination of the aforesaid suit land. The applicants seek further orders that the respondent dispense with any restrictions in obtaining the transfer and combination documents aforementioned for land parcel number

NDARUGU/GACHARAGE/794, NDARUGU/GACHARAGE/205 and NDARUGU/GACHARAGE/796.

The application is supported by the affidavit of JOHN NDUNGU GITAU the 2<sup>nd</sup> applicant herein and based on the grounds, inter alia, that the applicants are the administrators of the Estate of the late GITAU KAMAU who was the original registered owner of land parcel No. NDARUGU/GACHARAGE/794 as far back as 24<sup>th</sup> March, 1958 which land was later fraudulently transferred to GAKUU KIBUTHU on 29<sup>th</sup> June 1960 in circumstances that were fraudulent, illegal and void since by the time of his death, the said GITAU KAMAU had not sold the said land. Attempts by the applicants to obtain the documents relating to the said transfer from the respondents have been in vain hence this application.

I have considered the application and the supporting affidavit of JOHN GITAU NDUNGU together with the annexures thereto.

The application is not opposed and there was no representation from the office of the respondent when the matter came up on 25/4/2013 although duly served.

It is clear from the annexed grant of letters of administration (*annexture*

*JNG 1*) that the applicants are the joint administrators of the Estate of GITAU KAMAU who was the registered owner of parcel No. NDARUGU/GACHARAGE/795 as at 24/3/1958 (*see annexture JNG 2*). Then on 29/6/1960, the said land was transferred to GAKUU KIBUTHU and combined with parcel No. NDARUGU/GACHARAGE/205 in circumstances that the applicants perceive to be illegal as the late GITAU KAMAU who is the applicant's father never transferred the said land to GAKUU KIBUTHU. The applicant's efforts to obtain the documents supporting that transfer from the respondent's office have been frustrated even with the intervention of the Chief Lands Registrar and the Deputy Commissioner of Lands as shown in the annexed bundle of letters – *annexture JNG 4*.

*Section 34 of the Land Registration Act of 2012* provides that any person who requires to do a search in respect of any parcel of land shall be entitled to receive copies of any documents so required upon payment of any prescribed fees. The use of the word “*SHALL*” in the said provision indicate that the Land Registrar is under an obligation to provide any information relating to a dealing in any land in the Land registry subject only to payment of any prescribed fees. Indeed the letter from the Deputy Commissioner of Lands dated 10/6/2010 and directed to the respondent herein asks that the applicants be furnished with the documents sought. The respondent clearly understand the duty of providing the said documents because in his letter to the applicants dated 25/8/2010, the District Lands Registrar stated that the documents cannot be traced as the office is being re-organized but promised to avail the same when they are found. There is no further indication from the respondent to show whether the documents were ever found or what further efforts, if any, have been made in tracing the documents and with what results. The applicants were therefore within their rights to seek the intervention of this Court and as stated earlier, this application remains

un-opposed. Further, under *Article 35 (1) (a) of the Constitution*, it is provided that every citizen has the right of access to information held by the state. The documents being sought herein are in the possession of the respondent who is the custodian of the same and no explanation has been brought forward before this Court as to why the same cannot be made available to the applicants.

Upon considering all the matters placed before me, I grant the orders sought by the applicants in their Notice of Motion dated 22/1/2013. The applicants will also have the costs of the application.

**B.N. OLAO**

**JUDGE**

**15/5/2013**

15/5/2013

Before B. N. OLAO – JUDGE

CC – Muriithi

Mr. Omari for Wanjohi for Applicant – present

No appearance for Respondent

COURT: Ruling delivered this 15<sup>th</sup> day of May 2013

Mr. Omari for Mr. Wanjohi for the applicant present

No appearance for the respondent.

**B.N. OLAO**

**JUDGE**

**15/5/2013**