



**In re Estate of Nzioka Nzimba (Deceased) (Succession Cause  
286 of 2007) [2023] KEHC 22422 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22422 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 286 OF 2007  
FR OLEL, J  
SEPTEMBER 21, 2023  
IN THE MATTER OF THE ESTATE OF NZIOKA NZIMBA (DECEASED)**

**BETWEEN**

**JAMES NZIOKA ..... 1<sup>ST</sup> APPLICANT**

**MUSEMBI NZIOKA ..... 2<sup>ND</sup> APPLICANT**

**JOSEPH KATIWA NZIOKA ..... 3<sup>RD</sup> APPLICANT**

**MAURICE KIOKO NZIOKA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**HILLARY NGUMBAU NZIOKA ..... RESPONDENT**

**AND**

**MAGDALENE WANZA KIOKO ..... INTERESTED PARTY**

**RULING**

1. Before court is the summons for revocation or annulment of grant of letters of administration issued to the Respondent Hilary Ngumbau Nzioka. The summons which is dated 25<sup>th</sup> October 2018 is brought pursuant to Section 76(a), (b) and (c) of the [Law of Succession Act](#), Rule 44(1) of the [Probate and Administration Rules](#), Cap 160 law of Kenya. The prayers sought are that;
  - a. The grant of letters of administration made to Hillary Ngumbau Nzioka be cancelled or revoked.
  - b. That the said Hillary Ngumbau Nzioka be restrained either by himself, his agents or servants from transferring salary, sub-dividing or in any manner from dealing with all that parcel of land known as Matungulu/Kyaume/1520 measuring approximately four (4) acres pending hearing and determination of this application.



- c. That costs of the application be provided for.
2. The said summons for revocation of grant was supported by grounds on the face of the said application and further affidavit of James Nzioka dated 23<sup>rd</sup> May, 2022. The Respondent did oppose this application by filling his Replying Affidavit dated 17<sup>th</sup> December 2018 and 30<sup>th</sup> June 2022 while the interested party too opposed this application by her filing her Replying Affidavit dated 19<sup>th</sup> May 2022 and supplementary affidavit dated 29<sup>th</sup> July 2022.
  3. The 1<sup>st</sup> applicant did contend that the respondent, Hilary Ngumabu Nzioka did obtain grant by fraudulent means and did not include the other applicants as children of the deceased. He thereafter proceeded to allocate himself the parcel of land known as Matungulu/Kyaume/1520 measuring approximately four (4) acres to the exclusion of the applicants who also have a beneficial right thereto.
  4. The 1<sup>st</sup> applicant did contend that the Respondent's actions of transferring the entire parcel to himself was fraudulent and it forced them to place a caution on the said parcel of land to prevent it from being sold. In 2017 the land registrar notified them of his intention to remove the caution and they objected to the same and further proceeded to file this objection in court. The Respondent used underhand methods to transfer this property to the interested party, thus she cannot claim to be an innocent purchaser for value as she bought the said parcel of land in breach of the doctrine of *lis pendens*.
  5. The 1<sup>st</sup> applicant further alleged that the land in question was family land and it was not right for the Respondent to sell it and dispossess the applicants notwithstanding the visible interests which they had in the said parcel of land. They thus prayed that this application be allowed and the grant issued to the administrator Hillary Ngumbau Nzioka be revoked.
  6. The Respondent in response to this application did state that he never fraudulently acquired grant nor did he make any false statement before the honourable court. The grant was confirmed on 28<sup>th</sup> August 2018 before Hon. Justice Prof. Ngugi, upon persuing the summons for confirmation of grant, written consent filed and upon hearing both counsel on record and beneficiaries. It should be noted that all beneficiaries including the applicant signed the consent form 38 to consent issuance of the confirmed grant and were also present in court during confirmation of grant. It was also noted that, since the filing of this application, the 4<sup>th</sup> applicant Maurice Kioko Nzioka had distanced himself from the allegations made therein.
  7. The Respondent further averred that the reason why the sole property Matungulu/Kyaume/1520 was registered in his name by consent was because the other beneficiaries had prior to death of their father been given their share of the deceased property. The deceased did share out his property as follows;
    - a. Nzaui/Mumbuni/143 – utilized by Mrs. Beatrice Nzioka, James Nzioka, Katwiwa Nzioka, Mbeke Nzioka and Martin Nzioka.
    - b. Parcel of land number 430 at Nzaui location Mumbuni section 2- utilized by Musembi Nzioka.
    - c. Parcel of land Nzaui/Mumbuni 147 – utilized by Musembi Nzioka, Michael Nzioka and Kioko Nzioka.
    - d. Plot at Nzeluni market measuring 40 by 100 feet – utilized by all the children of the deceased i.e Musembi utilizes two doors (rooms) and all the others one door (room) each.
  8. It was thus clear that all the applicants and other beneficiaries were fully aware of and participated actively in the proceedings and it was therefore misleading for the applicant to try and depict him as having disinherited them. The summons to revoke the grant too had been filed nine (9) years after it had been confirmed and that showed bad faith on the part of the applicants.



9. The Respondent further averred that parcel no. Matungulu/Kyaume/1520 was registered in his name on 29<sup>th</sup> November 2012 and title deed issued to him on 18<sup>th</sup> March 2013. The applicants filed this application on 25<sup>th</sup> October 2018 which application was dismissed on 16<sup>th</sup> November 2019. He thereafter wrote to the lands registrar on 16<sup>th</sup> January 2020 requesting him to remove the caution based on the basis that the objection had been dismissed. On 10<sup>th</sup> October 2020 he placed a land search and confirmed that the caution had been removed. He thereafter proceeded to disposed off his property to the interested party on 29<sup>th</sup> January 2021 when there was no matter pending before court. The certificate of search annexed by the applicant had an erroneous issuance date of title deed which does not tally with the title he was issued with and was then not a valid document which the court could rely on. The respondent prayed that this application be dismissed with costs.
10. The interested party on her part stated that she was currently the registered owner of the property known as Matungulu/Kyaume/1520 and the same currently was not available for distribution. After acquiring the said property, she started to utilize the said parcel of land before the 1<sup>st</sup> applicant took the law in his own hands, moved in and started to destroy her development on the said parcel of land forcing her to file a suit being Kangundo Law court ELC case number 32 of 2021 for intervention and injunctive orders.
11. Despite being served with the injunctive orders the 1<sup>st</sup> applicant still insisted on disobeying the said orders and she had to file/institute contempt of court proceedings to enforce her right as a bonafide purchaser for value. She further stated that she did not work at the ministry of lands and it is only an official from the said ministry who could explain the discrepancy between the dates indicated on the land search documents and the date which is on the actual title deed. As a bone fide purchase, she was entitled to peaceful use and quiet enjoyment of her property. She prayed that this application be dismissed with costs.

### **Applicants Submissions**

12. The applicants filed their submission on 18<sup>th</sup> August 2022 and stated that the only issue for determination was whether they had made out a case to enable this court annul the grant that was issued to the Respondent.
13. Section 76 of the [Law of succession Act](#), Cap 160 provided that grant could be annulled if;
  - a. The proceedings to obtain the grant were defective in substance.
  - b. The grant was obtained fraudulently by making a false statement or by the concealment from the court of something material to the case.
  - c. Grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant being nullified.
  - d. If the person to whom grant was made has failed, after due notice and without reasonable cause to apply for confirmation of grant within one year from the date thereof, has failed to diligently administer the estate.
  - e. The grant has become useless and inoperative through subsequent circumstances.
14. The applicants admitted that the process of obtaining grant was not attended by any problems and was confirmed in the Respondents name. The contention is that whereas the grant was obtained procedurally, the administrator thereafter has fallen into problems by failing to diligently administer the estate and has failed to render accounts as and when required. The Respondent was faulted for



- not seeking consent of the applicants to register the estate property in his sole name and they further denied being in court during confirmation of grant. Reliance was placed on *Estate of Severio Ruri Njuiri (deceased) (2021)eKLR*.
15. In the alternative the applicants submitted that whereas all the beneficiaries were listed in the consent form, the only property of the estate was not equally divided and the interest of the applicants was not catered for and thus the grant was not properly confirmed.
  16. The applicants further faulted the interested party for buying a property that was under dispute, which she had notice of the same as there was a caution placed on the subject parcel of land and that pointed to a collusion with the Respondent to dispose off the suit parcel of land and dispossess them of rights therein. Reliance was placed in the case of *Weston Gitonga and 10 others versus Peter Rugu Gikanga and another* (2017) eKLR, *Katende versus Haridar and Company Ltd* (2008) 2 EA 173.
  17. The applicants further submitted that at the time the interested party purportedly bought the property, the suit was still pending before court and the interested party ought to have known of the same and known that the property was not free for sale. The purported sale thus fell foul of the doctrine of *lis pendens*. Reliance was placed on *Naftall Ruthi Kinyua versus Patrick Thuita Gachura and another* (2015) eKLR, *Mawji versus US international university and another* (1976) KLR and *Bernadette Wangare Muriu versus National Social Security Fund Board of Trustees and 2 others* (2012)eKLR.
  18. The applicants urged the court to hold that the property was bought during pendency of the suit and the interested party could not come to court claiming that she was a purchaser for value without notice and/or knowledge of the encumbrance that was in place. The appellant urged this court to allow this application with costs to the applicants.

### **Respondents Submissions**

19. The Respondent filed his submissions on 6<sup>th</sup> March 2023. He stated that he never obtained grant fraudulently by making a false statement and /or concealing any material fact from the Honourable court. It was clear and evident from the court proceedings that before the grant was confirmed there was a written consent filed and signed by all beneficiaries, who attended court before grant was confirmed and confirmed to court that they did not have any objection to the grant being confirmed.
20. The applicants willingly consented to the confirmed grant being issued in the sole names of the Respondent and the same was not to be held in trust for them. It was therefore misleading for the applicants to allude otherwise. The 4<sup>th</sup> applicant Maurice Kioko Nzioka had withdrawn his claim as against the appellant vide his letter dated 10<sup>th</sup> November 2018 and it was also important to note that the Respondent was not issued with the confirmed grant to hold in trust for the other beneficiaries as explained in his Replying Affidavit, this was by mutual consent simply because other beneficiaries had already gotten their share and were utilizing other properties of the deceased. It was also important to note that the applicants never rebutted the fact and it remained uncontroverted.
21. The Respondents ownership of parcel Matungulu/kyaume/1520 was thus lawful and its subsequent transfer to the interested party too was lawful. The summons for revocation of grant under consideration was dismissed by court on 6<sup>th</sup> November 2019 and two months later the Respondent did write to the lands registrar on 16<sup>th</sup> January 2020 seeking removal of the caution placed by the applicants. The said caution was removed as confirmed by the land search dated 10<sup>th</sup> October 2020 and subsequently the said property was transferred to the interested party on 29<sup>th</sup> January 2021. The said transfer was thus valid as there was no application, impediment or encumbrance whatsoever. The



applicants applied for their application to be reinstated on 8<sup>th</sup> September 2021. The doctrine of lis pendence could therefore not apply in this instant.

22. It was also pointed out that the land search relied on by the applicants annexed in the further affidavit, clearly had an erroneous date of issuance and did not tally with the title document itself and the land search annexed by the Respondent. The application was brought in bad faith as it sought to revoke grant made in the presence of all beneficiaries 6 years later and the same ought to be dismissed with costs.

### **The Interested Party Submissions**

23. The applicants claim against the interested party was that she is not an innocent purchaser for value without notice and the applicants relied on the doctrine of *lis pendens* to enforce their position. The issues for determination were;
- a. Whether the interested party was a purchaser for value
  - b. Whether there was any pending suit as at the time the interested party purchased the suit parcel of land.
  - c. Who bears cost of this application?
24. The interested party submitted that an innocent purchaser/ bonafida purchaser could be described as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. The key ingredients were that;
- i. He holds a certificate of title
  - ii. He purchased the property in good faith
  - iii. He has no knowledge of fraud
  - iv. He purchased it for valuable consideration
  - v. The vendors had apparent valid title
  - vi. He purchased without notice of any fraud
  - vii. He was not party to any fraud

Reliance as placed on *Katende versus Haridar and Company Ltd (2008)* and *E.A 173 and Weton Gitonga and 10 others versus Peter Rugu Gikanga and another (2017)eKLR*.

25. On the doctrine of *lis pendens* the basic ingredients of the doctrine was stated in the case of *in Re estate of Solomon Muchiri Macharia (2016)eKLR* to be;
- i. A litigation should be pending in a court of competent jurisdiction
  - ii. The suit must be relating to a specific immovable property
  - iii. The suit should not be collusive
  - iv. The suit should relate to a right in this specific property
  - v. Property should not be transferred or otherwise dealt with by any party to the suit, so as to affect the rights of any party thereto until the final disposal of the case.



26. The interested party identified the suit parcel of land Matungulu/Kyaume/1520 In December 2020 and on 10<sup>th</sup> December 2020 placed a land search, which indicated that the Respondent was the owner of the said parcel of land. It was registered in his name on 29<sup>th</sup> November 2012 and title deed issued on 18<sup>th</sup> March 2013. On the strength of this information they entered into an agreement on sale on 29<sup>TH</sup> January 2021 and she got the parcel of land registered in her name on 18<sup>th</sup> March 2021 and title deed issued to her.
27. There was therefore no basis upon which the applicants could claim that she colluded with the Respondent to dispossess them of the suit property and that claim was unsubstantiated and malicious. Secondly the interested party conducted due diligence before buying the disputed property at the time she bought the said property there was no suit pending, there was no caution or encumbrance on the said parcel of land, nobody was residing on the said parcel of land. It was bought for consideration which was paid and the property lawfully transferred to her. There was no proof of any fraud committed by the respondent or interested party and such allegation had no basis. This according to the interested party fully established that she was a bona fide purchaser for value without notice.
28. As to whether the doctrine of *lis pendens* is applicable, the interested party submitted that the succession cause had been finalized 13 months prior to her purchasing the suit property and the application for revocation of grant dismissed and therefore no suit existed to stop the transfer from being effected. Secondly there was no evidence placed before the court to show any collusion between her and the respondent to circumvent the said suit. The application as filed was devoid of merit and therefore should be dismissed with costs.

### **Analysis & Determination**

29. I have considered the issues raised herein and set forth the following issues as those that warrant a determination by the court.
- a. Was the grant herein obtained by fraudulent means and or by concealment of facts, to warrant having the same annulled.
  - b. Is the interested party a purchaser for value without notice of any defect on the land?
  - c. Does the Doctrine of *lis pendens* apply to the circumstances of this case.

Was the grant herein obtained by fraudulent means and or by concealment of facts, to warrant having the same annulled.

30. The Summons before me seeks revocation or annulment of a grant of representation. Section 76(a), (b) and (c) of the *Law of Succession Act* provides as hereunder:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;



31. That section provides that a grant of representation may at any time be revoked or annulled as long as the court is satisfied that the facts contemplated under the said section are proved. It is therefore clear that there is no limitation in so far as matters revocation or annulment of grant are concerned. The applicant must prove fraud on the part of the respondent/petitioner or that the said petitioner had grant confirmed by making a false statement and/or concealment of material facts.
32. The applicant on the face of his application and further affidavit filed on 24<sup>th</sup> May 2022, did admit that a family meeting was held before grant was confirmed, where it was agreed that the respondent will be administrator of the estate. Further the applicant admitted to have signed the consent form 38, consenting to confirmation of the grant by beneficiaries who have equal or lesser priority.
33. From the proceedings herein, I have ascertained that the grant herein was confirmed on 28<sup>th</sup> February 2018, by Hon Justice Ngugi J. During the said confirmation proceedings, the applicant and other family members were present in court and consented to the applicant being the sole administrator. The said grant was thus properly and procedurally confirmed and the applicant cannot be heard to fault the same in any manner.
34. The applicant and other family members consented that the sole estate property Matungulu/Kyaume/1520 be given to the respondent/petitioner, wholly as his and he was not to hold it in trust for the other beneficiaries. Having fully and actively participated in this process to confirm grant, the applicant cannot be heard to fault the process and allege that he was misled.
35. It is also worth noting that the respondent, did state that the reason as to why he was bequeathed the sole estate property was that, the other beneficiaries had during the lifetime of the deceased been bequeathed other properties, which they had occupied and had possession of. The properties as distributed were;
- a. Nzai/Mumbuni/143; Was bequeathed and being utilized by Mrs Beatrice Nzioka, James Nzioka, Katiwa Nzioka, Mbeke Nzioka and Martin Nzioka.
  - b. Parcel 430 at Nzai location Mumbuni section 2 was bequeathed and being utilized by Musembi Nzioka.
  - c. Parcel of land No Nzai/Mumbuni/147 was bequeathed to and being utilized by Musembi Nzioka, Micheal Nzioka and Kioko Nzioka.
  - d. Plot at Nzueni Market measuring 40 by 100 feet was being utilized by all children of the deceased. Musembi Nzioka was utilizing two doors, while the rest of the children had one door each.
36. The applicants did not in any manner rebut, this allegation and it remained uncontroverted evidence that was is deemed proved, and explained the basis as to why the petitioner/respondent was bequeathed the entire suit parcel Matungulu/Kyaume/1520.
37. I do find that the applicant has not in any manner proved that the petitioner/respondent acquired the confirmed grant by way of fraud, misrepresentation of fact and/or concealment of fact. There is no basis whatsoever to interfere with the same.
- Is the interested party a purchaser for value without notice of any defect on the land?
38. The applicant averred that they placed a caution on the suit property in 2017, and that gave sufficient notice to any purchaser that the property was encumbered and was not free for sale. They then filed this application for revocation of grant, which was still pending in court, when the respondent purported to transfer the suit property to the interested party. The applicant further alleged that the land search



dated 27<sup>th</sup> September 2018 had information which was at variance with the title deed. The land search showed that the title deed to the suit parcel was issued to the respondent on 29<sup>th</sup> November 2012, and the titled deed issued on 14<sup>th</sup> March 2018, while the title deed of the interested party showed that title deed was issued to the respondent on 18<sup>th</sup> March 2013. Under the circumstances it would be difficult to view the interested party as a purchaser for value without notice.

39. The interested party on her part stated that she signed an agreement to buy the suit property on 29<sup>th</sup> January 2021 after conducting due diligence and confirming that the same had no encumbrance placed on the title. She further visited the suit property and found no one residing on the said property. she thereafter agreed to buy it and had it transferred to her name on 18<sup>th</sup> March 2021. On taking possession, the 1<sup>st</sup> applicant moved in and started to destroy her property, and she had to file Kangundo Elc case No 31 of 2021 to get restraining orders as against him.

40. *Black's Dictionary* 8<sup>th</sup> Edition defines "bona fide" purchaser as

"one who buy's something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration."

41. In the Ugandan case of *Katende Vs Haridar & Company Limited* (2008) 2 E.A 173 it was held that;

"For purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine (he) must prove that;

- a. He holds a certificate of title
- b. He purchased the property in good faith.
- c. He had no knowledge of the fraud.
- d. He purchased the property for valuable consideration.
- e. The vendors had apparent valid title.
- f. He purchased it without notice of any fraud
- g. He was not a party to the fraud

{Emphasis added}

A *bona fide* purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner."

42. On re-examination of the record and filed documents, it is clear that the interested party has a title to the suit property, she purchased it for value, from a vendor who had a valid title deed, there has been no fraud proved as against the respondent and interested party.

43. The applicant alleged that the land search details differed from the title deed, with respect to the dates of issuance of the title deed. That maybe so, but the respondent and interested party also placed before court a land search and title deed showing that the respondent was issued with his title deed on 18<sup>th</sup> March 2013. To clear the discrepancy, it was incumbent upon the applicant to bring the land registrar to clarify the discrepancy but he did not do so. The court cannot rely on a photocopy of a land search which authenticity was not verified.



44. Further section 107(1) of the *Evidence Act* provides that;

“whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts must prove that those facts exist.”

45. Section 108 of the *Evidence Act* further provides that;

“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given by the other side.”

46. I also refer to the *Halsbury’s Laws of England*, 4<sup>th</sup> Edition, Volume 17 at para 13 and 14 where it states that;

“The legal burden is the burden of proof which remains constant through a trial; it is the burden of establishing the facts and contentions which will support the parties case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied in respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is essential to his case. There may therefore be separate burdens in a case with separate issues.

{16} The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both legal and evidential burden initially rests upon the appellant, the evidential burden may shift in the course of trial depending on the evidence adduced. As to weight of evidence given, by either side during the trial varies; so will the evidential burden shift to the party who would fail without further evidence.”

47. It is obvious that the applicant has failed to discharge both the legal and evidentiary burden placed on him by provisions of section 107 and 108 of the *Evidence Act*, Cap 160 laws of Kenya and has miserably failed to prove his allegation, that there was any fraud which took place, and/or was perpetrated by the interested party while buying the suit parcel of land. I do find and hold that she was a bona fide purchaser for value and holds a valid title to the suit parcel.

Does the Doctrine of *lis pendens* apply to the circumstances of this case.

48. The *Blacks Law Dictionary* defines *lis pendens* as the “jurisdiction, power or control acquired by a court over property while legal action is pending.”

49. In the Treatises by Mulla & Gour on the Indian transfer of Property Act, ( 6<sup>th</sup> Edition )it was stated that;

“Every man is presumed to be attentive to what passes to the courts of justice of the state or sovereignty where he resided. Therefore purchase made of property actually in litigation, pendente lite, for valuable consideration, and without any express or implied notice in point of fact affects the purchase in the same manner as if he had such notice, and he will be accordingly be bound , by the judgment or decree in the suit.”

At page 241, the Authors further state that

“The effect of the maxim is not to annul the conveyancing but only to render it subservient to the rights of the parties subject to litigation.”



50. The Supreme Court of India in the case of *K.N Aswathnarayana settee (D) Tr. LRs & Others Vs State of Karnataka & others* stated that ;

“ the doctrine of *lis pendens* is based on the legal maxim *ut lite pendente nihil innovetur* (during litigation nothing new should be introduced). The principal of lis pedence is in accordance with equity, good conscious or justice because they rest upon equitable and just foundation that it will be impossible to bring an action or a suit to a successful termination if alienations are permitted to prevail.

51. In *Majiwa Vs U.S. International University & Another* (1976) KLR, Justice Madan, while addressing the purpose of the principal of *lis pendens* adopted the finding in *Bellamy Vs Sabinex*, where Turner I.J held that ;

“ it is a doctrine common to the courts both of law and equity , and rests as I apprehend , upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same coerce of proceedings”

52. The basic ingredients of the doctrine of *lis pendens* are thus;

- a. A litigation should be pending in a court of competent jurisdiction;
- b. The suit must be related to a specific immovable property;
- c. The suit should not be collusive;
- d. The suit should relate to a right in this specific property;
- e. Property should not be transferred or otherwise dealt with;
- f. By a party to the suit;
- g. So as to affect the rights of any party thereto;
- h. Till final disposition of the case;

Any transfer of the suit property or any dealing with such property during pendency of the suit is prohibited except under the authority of the court. If anybody wants to alienate he can do so only with the permission of the court.

53. The interested party started the process of purchasing this parcel of land on 29<sup>th</sup> January 2021, by the said time, there was no suit pending before court as this application dated 25<sup>th</sup> October 2018, had been dismissed by court on 6<sup>th</sup> November 2019 for failure by counsel to comply with the directions earlier issued by the court. The transaction to sell the suit parcel started a clear thirteen (13) months after the said application had been dismissed, and the same was completed three (3) months later In March 2021.

54. This court finds that there was no suit pending, relating to the suit property as at the time it was bought by the interested party nor was there any collusion as between the interested party and the respondent to defeat any court process as related to the suit property. The doctrine of *lis pendens* therefore cannot apply to the circumstances of this case.



**Disposition**

- 55. I do find that the summons for revocation of grant dated 25<sup>th</sup> October 2018, is wholly unmerited and was without doubt filed as an afterthought, and in bad faith to vex the respondent and interested party. This is apparent given the fact the applicant fully participated in the confirmation of grant proceedings and expressly consented to the respondent being bequeathed the suit property.
- 56. It therefore follows that the only order commended in the circumstances of this case is that the said application be dismissed with costs to the respondent and the interested party.
- 57. The orders of stay of proceedings in Kangundo ELC E31 of 2021 issued by this court vide its orders dated 24<sup>th</sup> January 2022 is hereby set aside, and the interested party is at liberty to proceed with the said suit to protect her interest in the suit property.
- 58. It is so ordered.

**JUDGEMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

Delivered on the virtual platform, Teams this 21<sup>st</sup> day of September, 2023.

In the presence of;

.....for Applicant

.....for Respondent

.....Court Assistant

