

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1138 OF 2007

IN THE MATTER OF THE ESTATE OF MUNYAO NGUKU (DECEASED)

FRANCIS KIMANI KARIUKI.....APPLICANT

VERSUS

KASOLE MAKAU.....1ST RESPONDENT

MONICA MUTONO.....2ND RESPONDENT

RULING

1. The deceased Munyao Nguku died intestate on 19th May 1995. He was the registered owner of Kakuzi/Gituamba/Block 11/177 measuring about 4 acres. The applicant Francis Kimani Kariuki and the 2nd respondent had each bought two acres from the deceased. The applicant was appointed the administrator of the estate of the deceased. The grant was confirmed on 3rd April 2017 and rectified on 28th May 2018, each of the two being ordered to get two acres.

2. It does appear that the parcel of land was subdivided into Kakuzi/Gituamba/Block 11/431 and Kakuzi/Gituamba/Block 11/ 432 which were 1 acre and 3 acres, respectively. The former was registered in the name of the applicant and the latter was registered in the name of the 2nd respondent. It is evident that this subdivision and registration went against the decision of the court which had neither been reviewed nor set aside. This is the gist of the application dated 21st October 2020 by the applicant which seeks the cancellation of the two titles, and an order that the parcel be shared in accordance with the certificate of confirmation and the orders the court granted on 27th November 2018 and 26th July 2019.

3. The application was served but received no response.

4. I allow the application. Under **section 47** of the **Law of Succession Act (Cap. 160)** and **rule 73** of the **Probate and Administration Rules**, I order the cancellation of titles Kakuzi/Gituamba/Block 11/431 and Kakuzi/Gituamba/Block 11/432. Subsequently, Kakuzi/Gituamba/Block 11/177 shall be shared so that the applicant Francis Kimani Kariuki gets 2 (two) acres and the 2nd respondent Monica Mutono gets 2 (two) acres. The Deputy Registrar of this court shall sign all necessary documents to bring this order into effect.

5. The costs of the application shall be borne by Monica Mutono.

DATED and DELIVERED NAIROBI this 22ND day of FEBRUARY 2021.

A.O. MUCHELULE

JUDGE