



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1307 OF 1990

IN THE MATTER OF THE ESTATE OF KINYA KAHUGU (DECEASED)

JOSEPH KIANI KAHUGU (PETER).....APPLICANT

VERSUS

GAITHO KAHUGU.....RESPONDENT

RULING

1. The Application coming for consideration in this Ruling is the one dated 1.4.2019 seeking the following orders.

(i) THAT this Court do Order and direct that Parcel No. GITHUNGURI/IKINU/1147 be subdivided into 2 portions in the manner set out in the draft plan marked "JKK 3" attached to the Supporting Affidavit dated 1/4/2019.

(ii) In the alternative, that this Court do order and direct the manner in which Parcel No. GITHUNGURI/IKINU/1147 will be subdivided amongst the two beneficiaries of the Estate.

(iii) THAT the Costs be provided for.

2. The Applicant is supported by the Affidavit of the applicant JOSEPH KIANI KAHUGU in which he states that he is unable to reach an agreement on how to share the Parcel of Land known as GITHUNGURI/IKINU/1147 with the Respondent who is his brother.

3. The Respondent filed a Replying Affidavit dated 7/6/2019 in which he stated that the Applicant has sold his share to 3rd parties and further that he wants the land to be divided into two portions and not four portions as portions as proposed by the Applicant who wants to take care of his buyers.

4. The Parties filed written submissions which I have considered. The two brothers inherited the parcel of land GITHUNGURI/IKINU/1147 (hereafter referred to as the suit Property) from the deceased KINYA KAHUGU who disappeared in 1958.

5. The deceased KINYA KAHUGU was declared dead by Court Order issued on 12.9.2006 in Misc. Application No. 452 1988.

6. According to the Certificate of Confirmation issued on 29.3.2017, the suit property which measures 3.6 Acres was to be shared between the Applicant and the Respondent at the ratio of 1.6: 2 Acres.

7. The outstanding issue is how the Portion should be subdivided. The Applicant has proposed that the land be subdivided in a manner that gives access to the main road and also allows each to the riparian land.

8. The Respondent however says the area is arable and proposes that he gets the portion that touches the main road and the Applicant takes the lower position.

9. I find that it is not in dispute that the Respondent will get bigger share of the land. It is only fair that each party has access to the main road.

10. The Respondent should be content with the bigger share and he should not insist that he should also get the better part or the "upper wider portion" of the land as he calls the area he is demanding.

11. The issue of sale of the land to 3rd parties by the Applicant is not before this Court and it has nothing to do with the acreage each party should inherit from the brother's land or the manner of subdivision.

12. I direct that the land be subdivided in such a way as to give each access to the main road .

13. I accordingly allow the Application dated 1.4.2019 and direct that the land be shared as proposed by the Applicant who is also the administrator of the land.

14. Since this is a family issue, each party to bear its own costs of the application.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 24TH DAY OF JANUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.