



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

MISC. SUCCESSION CAUSE NO. 43 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE CHARLES MURUNGI MWIANDI (DECEASED)

AND

LENAH MUKWANJAGI MURUNGI.....APPLICANT

VERSUS

KENNETH MUGENDI MURUNGI.....RESPONDENT

R U L I N G

1. **LENAH MUKWANJAGI MURUNGI**, the Applicant herein has moved this court vide summons dated 29th October 2019 brought under **Section 49 Law of Succession Act** and **Rule 73 P&A** Rules for the following orders namely;

a) That the subdivision carried out by one Chabari on L.R. No. Mwimbi/Kiraro/51 on unknown date be nullified and order for a fresh subdivision as per certificate of confirmation over the same property be given.

b) The costs of this application be provided.

2. The Applicant has listed the following grounds in the face of the application namely;

i) That this court, on 19th May 2019 gave an order to the District Surveyor to implement the certificate of confirmation.

ii) That the administrator/Respondent did not involve or engage the Applicant in the implementation of the court order.

iii) That the Applicant came home to find that the Respondent had engaged one Chabari to carry out the subdivisions.

iv) That the Applicant became suspicious because the said Chabari did not invite her for subdivision process or to sign mutation forms.

v) That the Applicant is suspicious that she was allocated much less than what she was given in the certificate of confirmation which was 2.33 acres.

vi) That she was sought an opinion of another surveyor namely; Kithinji Munene who informed her that her share measured 1.8 acres instead of 2.33 acres,

vii) That the subdivisions carried out are illegal and should be done afresh.

3. The Applicant has supported this application with an affidavit sworn on 29th October 2019 where she has reiterated the above grounds claiming that this court vide certificate of confirmation dated 12th March 2018 granted her and her 2 daughters 2.331 acres.

4. She avers that a private surveyor she engaged confirmed her suspicion that the portion given to her was 1.8 and not 2.331 acres. She has however not tendered evidence of the measurements or the survey sketch plan indicating that her portion is 1.8 acres and not approximately 2.331 acres.

5. The Applicant has in her written submissions faulted the Respondent for being against her because he did not want her and her daughters to benefit from the estate from the beginning. She accuses him of sneaking to subdivide the estate after she had gone to Nairobi and wondered why the Respondent picked on Chabari instead of Government Surveyor (District Surveyor) as had been ordered. According to her the Respondent did so in bad faith with a view to cheating her that she had been given 2.331 acres when it was only 1.8 acres.

6. Kenneth Mugendi Murungi, the Respondent herein has opposed this application through a Replying Affidavit sworn on 9th January 2020. He has faulted the Applicant stating that she is out to delay this matter.

7. He has claimed that Chabari is a Government Surveyor and faulted the Applicant for trying to get a favourable Surveyor to bid for her interests against the interests of other beneficiaries.

8. He has further faulted her for not paying surveyor's fees when this court had directed that the surveyor's fees would be shared.

9. This court has considered this application and the response made. For the record this is not the first time this court is dealing with the issue raised by the Applicant which is the complaint that the portion given to her is smaller on the ground than the one granted to her by this court when the grant was confirmed on 6th March 2018.

10. This court gave directions on 15th January 2020 when this application came up for hearing and the directions were clear. The District Surveyor was directed to visit the estate and carry out physically the measurements of portions given to respective beneficiaries and file a report. The District Surveyor, Magdalene W. Njuki filed a report dated 12th February 2020 and annexed a field sketch of the estate and how one Obadiah Wainaina had carried out subdivisions. The portion going to the Applicant marked "B" is clearly seen on the sketch and from the measurements the plot measures 2.33 acres which is in tandem with the certificate of confirmation. The Applicant has not challenged the findings of the District Surveyor or has she filed or exhibited the findings of her own surveyor named Lemic Kithinji Munene if it is true that the said surveyor is duly licenced and actually found out the acreage on the ground to be 1.8 acres instead of 2.33 acres as indicated by the findings of 2 different surveyors (Obadiah Wainaina and Magdalene W. Njuki). In the absence of an expert report challenging the report of the District Surveyor it is hard to resist the conclusion that the Applicant's eyes may be deceiving her that her portion is smaller than what this court gave her. For the above reasons this court finds no merit in the application dated 29th October 2019. The same is dismissed with costs.

Dated, signed and delivered at Chuka this 16th day of June 2020.

R.K. LIMO

JUDGE

16/6/2020

Ruling dated, signed and delivered in the open court in presence of Mutani for Respondent and Mugo for Applicant.

R. K. LIMO

JUDGE

16/6/2020