



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

SUCCESSION CAUSE NO.80 OF 2017

IN THE MATTER OF THE ESTATE OF GATHOGO WAGACHA ALIAS GATHOGO WAGACA (DECEASED)

A N D –

MARY GATHONI GATHOGO.....APPLICANT

V E R S U S

CHRISTOPHER CAXTON GATHOGO KARIUKI....RESPONDENT

R U L I N G

For determination is the application dated 19/7/2016 in which the respondent seeks the following orders:

(1) ...spent

(2) That the Hon. Court be pleased to compel Mary Gathoni Gathogo to co-operate with Nyandarua County Surveyor towards sub-dividing the land to accord with the best approach which conventionally governs such subdivision as guided by the Nyandarua County Surveyor;

(3) That the Hon. Court be pleased to grant an order specifically allowing Nyandarua County Surveyor to subdivide the land using the cross approach;

(4) That the County Surveyor be given security by police officers from Milangine Police Station;

(5) That the cost of the survey work be paid to the County Government of Nyandarua after completion of the work.

The grounds upon which the application was brought are that Mary Gathoni desires that the land be subdivided in such a manner that would leave Christopher Caxton Gathogo Kariuki without any access road to the land; that Mary Gathoni desires the land to be subdivided in her favour; that it is necessary that the court intercedes because efforts to have Mary Gathoni to comply with requirements as to the subdivision of the parcel of land have failed and the decree of the court will not be implemented.

The application is supported by the affidavit of the applicant Christopher Caxton who reiterates the grounds.

The District Surveyor Nyandarua was summoned to appear before the court to justify his preferred mode of distribution of the suit land.

The surveyor, Joshua Nyabola recalled having visited the subject land which measures about 13 acres and situated along the tarmac road connecting Milangine and Dundori; that one side of the land that touches the tarmac and is about 10 metres wide while on the opposite side, it borders a river. He recalled that he had a mutation where one party had got the tarmac side while the other got the river side but the parties did not agree with that subdivision. He prepared his report dated 23/2/2016 in which he indicated that the two parties had disagreed on the manner of subdivision because Mary had insisted on longitudinal approach while Caxton preferred the cross method of subdivision.

He attached the sketches showing both modes of subdivision. Mr. Nyabola observed that for Physical Planning

and economic purposes, the best approach of subdivision should be the cross one.

The surveyor however said that if each party wishes to have part of the tarmac and part of the river he is able to do that subdivision, to have 3 acres next to the tarmac which will be shared equally and the balance of the 10 acres be shared equally too, with each getting part of the river but it would be less economical.

Having heard the surveyor, it is my view that no subdivision can be completely satisfactory to both parties. It is a matter of give and take and it should be an equitable subdivision. The surveyor considered the economical use of the land. Subdividing the land into four parts in order for both parties to access the tarmac and the river is not economical. The subdivision will not only affect the applicant and respondent, but the future use of the land. For that reason, I am persuaded that the cross method which the surveyor had adopted is the best way to have the land subdivided. The surveyor said that there is an access road for the one who gets the river side.

The upshot is that the cross method which makes more economical sense should be adopted.

Prayers 2, 3 and 4 are granted.

Costs of survey and subdivision be borne by both parties equally upon completion of the subdivision and each party to bear its own costs.

Dated, Signed and Delivered at NYAHURURU this 25th day of June, 2019.

.....

R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Nderitu for the applicant Mary Gathoni

Ms. Wangeci for respondent – absent

Soi – Court Assistant