

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HCC SUCC. NO. 51 OF 2015

(Formerly Naivasha Succ No. 60 of 2008)

IN THE MATTER OF THE ESTATE OF KAMUNGE GICHIRI (DECEASED)

STEPHEN KARIUKI KAMUNGE..... 1ST PETITIONER/OBJECTOR

AND

JOSEPH MWAURA KAMUN..... 2ND PETITIONER/RESPONDENT

R U L I N G

1. On 21st April, 2016 the court delivered its decision determining the distribution of the estate of the deceased herein as follows:-

	NAME OF HEIR	DESCRIPTION OF PROPERTY	DISTRIBUTION OF SHARES
2ND HOUSE			
1	Stephen Kariuki Kamunge (1 st Petitioner)	Nyandarua/Njabini/22	1.65 Acres
2	Johnstone Kamunge Ndungu (Dependant)	Nyandarua/Njabini/22	0.25 Acres
3	Tabitha Wangui (Dependant)	Nyandarua/Njabini/22	0.5 Acres on her behalf and surviving children of her deceased mother, Wanjiru Kamunge
3RD HOUSE			
1	Joseph Mwaura Kamunge (2 nd Petitioner)	Nyandarua/Njabini/22	1.85 Acres
2	Mary Njoki (Widow of Samuel Njuguna Kamunge)	Nyandarua/Njabini/22	1.85 Acres for herself and the children of the deceased husband
3	Milka Wangui (Widow of Evans Kinyanjui)	Nyandarua/Njabini/22	1.85 Acres for herself and the children of the deceased husband

	Kamunge)		
4	John Njoroge Kamunge	Nyandarua/Njabini/22	1.85 Acres
5	Reuben Kamunge Njoroge (Dependant)	Nyandarua/Njabini/22	0.5 Acres for himself and any of the surviving children of the deceased mother Waithera Kamunge.
TOTAL			10.ACRES

2. The grant in respect of the deceased's estate was therefore confirmed in the joint names of **Stephen Kariuki Kamunge** (1st administrator) and **Joseph Mwaura Kamunge** (2nd Administrator) his stepbrother. It would appear that subsequent to the ruling, the 2nd Administrator refused to cooperate in the implementation of the court's ruling, prompting the application filed on 9th August, 2016 by the 1st administrator to have all the requisite documentation be executed by the Executive officer of this court. This application was granted on the 7th November, 2016. It appears that subdivision of the estate land parcels has taken place.

3. Undeterred, the 2nd Administrator filed an application on 25th May, 2017 seeking to halt what he referred to as "irregular, illegal" subdivisions and registration of the estate property. The gist of the application as discerned from the grounds and the Applicant's affidavit was that the survey and subdivisions carried out were not in accordance with the orders of the court, and that the surveyor was not impartial, both which exposed the Applicant to prejudice, as a beneficiary.

The 1st Administrator swore a Replying affidavit. He documented the steps taken since the court's ruling and subsequent enforcement orders. He states that survey work was carried out by the County surveyor in the presence of the Applicant who did not object. That the Applicant's parcel is number 1186 (marked G) on the mutation forms with two access roads.

4. He defended the mutation forms arising from the subdivisions and asserted that the Applicant's portion was properly delineated, and that access roads had been provided. He attached a copy of the mutation forms dated 29th May, 2017. He took issue with Applicant's complaints which he said were not made during the survey exercise.

5. In a Further affidavit, the Applicant claims that the survey exercise left him landlocked. That he did not participate in the survey exercise. A supplementary affidavit by the 2nd Administrator countered the assertions in the Applicant's further affidavit.

6. On 22nd November, 2017 the parties agreed to rely on their affidavits and did not make any submissions leaving the court to make its determination.

7. I have now looked at the affidavits filed and the annexures thereto. The complaint raised by the 1st Administrator is that the survey exercise was illegal and prejudicial to his interest. He also claimed that he was not consulted and that the parcel assigned to him is land locked.

8. There is evidence by the 1st Administrator that the 2nd Administrator participated in the survey exercise, but even if he did not, the 2nd Administrator has previously demonstrated unwillingness to cooperate to implement the court's orders on distribution.

9. The survey exercise was legal as the court had given sanction to the distribution of the property of the deceased. Having studied the mutation forms attached to the affidavit of the 1st Administrator, it is clear that the parcel number 1186 marked 'G' measuring 1.85 acres (which was the acreage assigned to the

Applicant) is fronted by two access roads. No other beneficiary whose portion abuts the 2nd Administrator's portion has complained. The Applicant has not in any way controverted the contents of the 1st Administrator's affidavits or shown how his parcel was landlocked in the subdivision.

10. It seems to me that the 2nd Administrator by the present application is seeking to stall the distribution process. Evidently, he was unhappy with the decision of the court but rather than appeal has sought to subvert the implementation of the court's orders. His application is tainted with *mala fides* and has no basis whatsoever. I dismiss it with costs. Let the distribution of the estate of the deceased proceed expeditiously to conclusion, so that the respective beneficiaries can get their due shares.

Delivered and signed at Naivasha this **16th** day of **March, 2018**.

In the presence of:-

Mr. Owuor holding brief for Mr. G. N. Kimani for the Petitioner/Objector

Mr. Gichuki for the Petitioner /Respondent

Court Clerk - Quinter

C. MEOLI

JUDGE