



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT SUCCESSION CAUSE NO.864 OF 2011

IN THE MATTER OF ESTATE OF THE LATE WAIRIMU w/o NDIRANGU alias TERESA WAIRIMU NDIRANGU  
(DECEASED)

CYRUS MACHARIA NDIRANGU.....APPLICANT

VERSUS

LUCY WANJIRU WAMBUGU.....RESPONDENT

RULING

What is before me is the summons general dated 7<sup>th</sup> April 2016. It seeks orders: -

1. ***“THAT*** the Respondent be ordered to sign the Mutation Form and all the requisite Land Control Board applications and any other necessary documents and avail their passport size photos, photocopies of ID CARDS and the pin number certificates to facilitate conclusion of this matter.
2. ***THAT*** in the alternative the court do authorize the Deputy Registrar to sign all the above documents and do order the land registrar to dispense with the production of the passport size photos and photocopies of ID CARDS pin number certificates of the Respondent to effect the registrations.”

It is brought under Rules 49 and 73 of the P&A rules. It is supported by the affidavit sworn by the applicant Cyrus Macharia Ndirangu on 7<sup>th</sup> April 2016. He depones that upon confirmation of the grant he hired surveyor to subdivide the land Gikondi/Thimu /392 which is to be shared in equal shares of 2.5 acres each. That the surveyor prepared mutation forms which he depones are annexed as C “1”. However the respondent refused to sign them.

The respondent Lucy Wanjiru Wambugu has opposed the application vide her replying affidavit sworn on 17<sup>th</sup> May 2017. Her contention is that the parcel of land is partly productive and partly unproductive. She has drawn a sketch not to scale, demonstrating this fact and how the applicant has proposed to share it. Clearly on the applicant’s sketch, she is to receive the part largely described as unproductive and that is the basis of her objection.

The applicant’s sketch is missing from his application. However it could appear that that the respondent has filed as a sketch is a true representation of his proposal as he has not responded to it.

When the application came for hearing he told the court that he was relying solely on his affidavit. He submitted that the court could consider the affidavits in order to determine the issue.

Rule 49 of the P&A rules provides for the filing of application relating to the estate of a deceased person on issues otherwise not provided for. Rule 73 saves the inherent power of the court to make such orders as may be necessary to meet the ends of justice and prevent the abuse of the process of court.

The applicant does not want to address the issue that has made the respondent refuse to sign the mutation forms. Instead he wants to circumvent them by getting orders to have the same signed by a person who has no idea as to what the real issues are on the ground.

The court cannot allow that. The issue is whether the court can direct the manner in which the property will be shared?

From the respondent’s affidavit it is clear that if the land is shared in the manner in which the applicant has suggested, it will be equal in size only but not in quality hence not equal. I think equal in this case connects even equally in value.

It would only be fair if the applicant had involved the respondent in the survey to ensure that the land was shared equally in all fairness.

Hence the application is denied. The two parties to engage a surveyor(s) to look at the property and ensure equitable distribution of the parcel of land in equal shares.

**Dated, delivered and signed at Nyeri this 12<sup>th</sup> day of April, 2018.**

**Mumbua T. Matheka**

**Judge**

In the presence of:-

Court Assistant-Atelu

No appearance for the Respondent

Mary Njeri – sister to the applicant

**Mumbua T. Matheka**

**Judge**