



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 116 OF 2007**

**IN THE MATTER OF THE ESTATE OF M' IKIUGU MBURUGU-DECEASED**

**PETER MURUNGI.....PETITIONER/APPLICANT**

**-VS-**

**JEREMEY MURIUNGI.....OBJECTOR/RESPONDENT**

**JUDGMENT**

[1] By Summons dated 23<sup>rd</sup> September 2014 brought pursuant to Section 47 of the Law of Succession Act CAP 160 of the Laws of Kenya and Rule 73 of the Probate and Administration Rules, the Petitioner/Applicant had sought the following orders:

1. Spent.....
2. **THAT ending the inter partes hearing of the application, an order be issued, stopping the co-administrator of the Estate of the deceased Jeremy Kiugu from registering the mutation forms over the subdivision of L.R NO. Igoji/Mweru1/92.**
3. **THAT the honourable court be pleased to order that each beneficiary do receive his/her share of the estate in a manner that this/her houses, structures and developments are not tampered with or destroyed.**
4. **THAT the honourable court do direct that the survey work already done by Jeremy Kiugu be repeated afresh and in the presence of all beneficiaries.**
5. **THAT costs of the application be provided for.**

[2] The Applicant complained that the Co-Administrator of the estate on 10<sup>th</sup> September 2014 went to the estate with a private surveyor and subdivided the estate in the absence of the other beneficiaries. The said survey meant that the Applicant shall have to demolish his houses and in default he would be forcefully evicted. This dispute was feuding with no end in sight. On 30<sup>th</sup> November 2015, after an intense discussion with the parties and their counsels, parties agreed that this application and all the issues herein shall be resolved by the surveyors. They therefore agreed that each party shall appoint own surveyor both of whom shall visit the estate property and file a joint surveyor's report on the best way of sub-dividing the estate property. A joint surveyor's report was ultimately filed in court on 21<sup>st</sup> July 2016 and each party was supplied with a copy. On 21<sup>st</sup> February 2017, all parties except Mr. Mwirigi's client i.e. the 1<sup>st</sup>

Administrator, agreed with the joint surveyors report. Consequently, the court directed that Mwirigi's client to file submissions elaborating their objection to the joint surveyor's report. All parties subsequently file their respective submissions, hence, this judgment.

[3] The Petitioner submitted that the joint report seemed to recognize each party should be placed where his developments are including houses. However, the joint survey report did not address a crucial point as to whether the Applicant's house would be demolished. It also demarcates 2 acres fronting the tarmac and created a 6 meter road in between the 2 acres and the other portions. To them, the said road is unnecessary and has not been provided for in the Certificate of Confirmation of Grant. As such, the Petitioner argued that the joint survey plan was unjust as it denied each beneficiary a chance to have his land to front the main road.

[4] On the other hand it was submitted for the Respondent that the survey report which was being contested was arrived by the County Surveyor and surveyors appointed by the Applicant after their visit to the suit property on 6<sup>th</sup> May 2016. They stated that the report clearly showed that before the survey was carried out, all the necessary steps were taken by both surveyors and that the surveyors heard all the parties in the presence of the chief, elders and family members. The report stated that the surveyors took into account development on the various portions as had been shown to the beneficiaries by their late father. The report also indicated that the surveyors noted that there were marked boundaries where each party cultivated. It was further submitted that the Petitioner was duly represented by his surveyor and he could not now not turn around and reject the survey report. In any event, he was not an expert in the field. Consequently, the Respondent urged the court not allow further survey of the estate property.

#### **DETERMINATION**

[5] I have carefully considered the instant Application, the survey report, the rival submissions by the parties, the material on record and the law. The letter from the Ministry of Lands and Physical Planning filed in court on 21<sup>st</sup> July 2016 confirms that, on 6<sup>th</sup> May 2016, the firm of Unique Link Dynamic Limited on behalf of the Petitioner/Applicant and Ministry of Lands and Physical Planning for the Respondent visited the suit property as directed by court. The letter further confirmed the report and the sketch plan attached thereto were arrived at jointly. It is therefore not tenable that the Petitioner should now challenge the said joint report. The said joint report was prepared jointly and the Applicant was duly represented. The Applicant did not raise any queries at the time. The joint survey report took into consideration all the developments on the land and heard the parties on the issues relevant to the assignment given to them by the court. It took into account the existing boundaries which were directed by the deceased. It also took into account the occupation and cultivation by the beneficiaries of the estate property. Finally, other land subdivision and cadastral considerations were taken into account.

[6] I directed the joint report to be supplied to all the parties for their consideration. On 21<sup>st</sup> February 2017, all the beneficiaries except the Petitioner/Applicant were in agreement with the report and they all confirmed that they were present when the surveyor visited the land. Now, taking all factors into account, I conclude that the Applicant has not adduced any sufficient reasons to impel the court not to adopt the joint surveyors' report. This is a fairly old matter and as the cardinal principle of law demands, litigation must come to an end at some point. In the upshot, I find the Petitioner's Application dated 23<sup>rd</sup> September 2014 to be without merit and is accordingly dismissed in its entirety. Accordingly the surveyors report filed in court on 21<sup>st</sup> July 2016 is adopted as the final order of this court; the estate shall be subdivided as per the said report. This being a succession matter, I order that each party shall bear own costs. It is so ordered.

**Dated, signed and delivered in open court at Meru this 29<sup>th</sup> day of May 2017.**

-----

**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mrs. Ntarangwi advocate for 2<sup>nd</sup> Administrator

Mrs. Mwilaria advocate for Mrs. Mwirigi advocate for 1<sup>st</sup> administrator

All parties present.

-----

**F. GIKONYO**

**JUDGE**