



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**

AND

MARY GATHONI GATHOGO..... APPLICANT

V E R S U S

CHRISTOPHER CAXSTON GATHOGO KARIUKI..... RESPONDENT

R U L I N G

By the **Notice of Motion** dated 3/10/2016, the applicant, Christopher Caxton Gathogo Kariuki seeks the following orders:

- (1) That the Deputy Registrar of this court be allowed to sign page 2 and 4 of the mutation form for the 2nd administrator to enable the County Surveyor Nyandarua to proceed;***
- (2) That the applicant be at liberty to apply;***

The application is supported by the affidavit of the applicant and grounds found on the face of the application.

The court proceeded to hear the counsel for the applicant after it was satisfied that the respondent, Mary Gathoni who is a co-administrator in this matter, was served with the hearing notice but failed to attend.

The applicant deponed that on 28/7/2016, the court ordered the respondent to co-operate with the Nyandarua County Surveyor towards subdividing the parcel of land No.Nyandarua/Milangine/139, but that the respondent has refused to sign the mutation form and that is what has prompted this application; that if the court does not intervene, then the applicant stands to suffer irreparable loss.

Ms. Wangechi, counsel for the applicant argued that the applicant and respondent were joint administrators of the deceased's estate but the respondent has refused to co-operate.

I have perused the record and confirm that on 28/7/2016, the Judge granted Prayer 2, 3, 4 and 5 of the application dated 19/7/2016 compelling the respondent;

- (i) To co-operate with the surveyor Nyandarua County towards subdividing the subject land;

(ii) The County Surveyor be allowed to subdivide the land using the cross approach; and

(iii) That the county Surveyor be given security from Milangine Police Station.

In light of the above, I am satisfied that the respondent is trying to frustrate the applicant by disobeying the court's order. The order sought is merited and it is granted in the following terms:

(1) That the Deputy Registrar of this court is hereby allowed to sign page 2 and 4 of the mutation form in place of the 2nd administrator to enable the County Surveyor Nyandarua proceed with subdivision;

(2) That the applicant be at liberty to apply;

(3) Costs be in the cause.

It is so ordered.

Dated and Signed at NYAHURURU this 31st day of July, 2017.

.....

R.P.V. Wendoh

JUDGE

PRESENT:

Absent – Advocate for the Applicant/Respondent

Rupita - Court Assistant

Applicants – absent