



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY AND PROBATE DIVISION**

**MISC. APPLICATION NO.116 OF 2015**

**IN THE MATTER OF THE ESTATE OF T W K (A PERSON OF UNSOUND MIND)**

**STEPHEN NJUGUNA KANYINYO.....APPLICANT**

**R U L I N G**

1. By a Chamber Summons dated 7<sup>th</sup> August 2015 brought under **Sections 26, 27, 29 and 32** of the **Mental Health Act (Cap 248) Order 32 rule 15** of the **Civil Procedure Rules 2010, section 3A** of the **Civil Procedure Act Cap 21 Laws of Kenya**, by the Applicant, he sought orders of court that:
  - a. The Applicant be appointed the manager of the estate of T W K a person of unsound mind.
  - b. That the Applicant be granted powers to execute all conveyances in relation to parcel of land Dagoretti/Ruthimitu/562 on behalf of T W K.
2. The application is premised on grounds that T W K is of unsound mind and is not in a position to manage her estate; that the parcel of land known as Dagoretti/Ruthimitu/562 is registered in her name and the respective identities and shares of all persons beneficially entitled thereto have been ascertained and determined.
3. In a supporting affidavit sworn on 7<sup>th</sup> August 2015 the deponent Stephen Njuguna Kanyinyo depones that he is the eldest son of T W K (hereinafter referred to as the Subject) and that she gave birth to seven children out of whom two have died as follows: Stephen Njuguna Kanyinyo, Agnes Nduta Kinyanjui, Nancy Ngendo Kanyinyo, James Mungai Lucas and Salome Wanjiru Kanyinyo. That the Subject was married to Lucas Kanyinyo Kagundu who is now deceased.
4. The Applicant further averred that his late father's land was sub divided between his two wives in 1976 with his mother getting 10 acres while her co-wife got 14 acres respectively. That on 19<sup>th</sup> July 1980 Teresia was registered as the absolute proprietor of title Number Dagoretti/Ruthimitu/562.
5. The Applicant attached to his application a medical report from Mathari National and Teaching Referral Hospital which stated that the Subject had been diagnosed with chronic schizophrenia and dementia condition due to her advanced age and is therefore, not in a position to manage her estate. That all the other siblings have consented to the Applicant being appointed manager of the Subject's estate. He also attached a copy of the mutation subdividing Dagoretti/Ruthimitu/562 into twenty (20) plots as follows:

|    | <b>Assets</b>                | <b>Beneficiary</b>       | <b>Share</b> |
|----|------------------------------|--------------------------|--------------|
| 1. | Dagoretti/Ruthimitu/<br>1297 | Stephen Njuguna Kanyinyo | 0.38 Ha      |

|     |                              |                          |          |
|-----|------------------------------|--------------------------|----------|
| 2.  | Dagoretti/Ruthimitu/<br>1298 | Lucas Kanyinyo Waiganjo  | 0.48 Ha  |
| 3.  | Dagoretti/Ruthimitu/<br>1299 | James Mungai Lucas       | 0.38 Ha  |
| 4.  | Dagoretti/Ruthimitu/<br>1300 | James Mungai Lucas       | 0.20 Ha  |
| 5.  | Dagoretti/Ruthimitu/<br>1301 | Lucas Kanyinyo Waiganjo  | 0.20 Ha  |
| 6.  | Dagoretti/Ruthimitu/<br>1302 | James Mungai Lucas       | 0.11 Ha  |
| 7.  | Dagoretti/Ruthimitu/<br>1303 | Stephen Njuguna Kanyinyo | 0.11 Ha  |
| 8.  | Dagoretti/Ruthimitu/<br>1304 | Salome Wanjiru Kanyinyo  | 0.40 Ha  |
| 9.  | Dagoretti/Ruthimitu/<br>1305 | Stephen Njuguna Kanyinyo | 0.10 Ha  |
| 10. | Dagoretti/Ruthimitu/<br>1306 | Nancy Ngendo Kanyinyo    | 0.118 Ha |
| 11. | Dagoretti/Ruthimitu/<br>1307 | Agnes Nduta Kinyanjui    | 0.21 Ha  |
| 12. | Dagoretti/Ruthimitu/<br>1308 | Teresia Wambui Kagundu   | 0.115 Ha |
| 13. | Dagoretti/Ruthimitu/<br>1309 | Grace Wacera Kagundu     | 0.10 Ha  |
| 14. | Dagoretti/Ruthimitu/<br>1310 | Stephen Njuguna Kanyinyo | 0.1 Ha   |
| 15. | Dagoretti/Ruthimitu/<br>1311 | Lucas Kanyinyo Waiganjo  | 0.10 Ha  |
| 16. | Dagoretti/Ruthimitu/<br>1312 | James Mungai Lucas       | 0.10 Ha  |
| 17. | Dagoretti/Ruthimitu/<br>1313 | James Mungai Lucas       | 0.17 Ha  |
| 18. | Dagoretti/Ruthimitu/<br>1314 | Lucas Kanyinyo Waiganjo  | 0.17 Ha  |
| 19. | Dagoretti/Ruthimitu/         | Stephen Njuguna Kanyinyo | 0.10 Ha  |

|     |                              |                          |         |
|-----|------------------------------|--------------------------|---------|
|     | 1315                         |                          |         |
| 20. | Dagoretti/Ruthimitu/<br>1316 | Stephen Njuguna Kanyinyo | 0.08 Ha |

6. Having perused the pleadings filed in this matter and having heard the submissions of learned counsel Mr. Kangethe for the Applicant, I am persuaded that the Subject is a person who is suffering from a mental disorder. In view of the expert opinion of Dr. Gatere the consultant psychiatrist in which he states that schizophrenia is a chronic disorder of the mind in which one loses contact with reality and is likely to make irrational decisions. I find that she is not therefore able to take care of herself and to conduct her own affairs.

There being merit in the application dated 7<sup>th</sup> August 2015, I hereby allow it in the terms proposed by the Applicant.

**SIGNED DATED and DELIVERED** in open court this **22<sup>nd</sup>** day of **October 2015**.

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**L. A. ACHODE**

**JUDGE**