

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 2318 of 2003

IN THE MATTER OF THE ESTATE OF ELIZABETH WAMAITHA KABURU (DECEASED)

MARGARET NJAMBI KABURU.....APPLICANT

V

PETER NJAU WANDERI.....RESPONDENT

R U L I N G

Before me is an application made under **Rules 49, 59(5) and 73** of the **Probate and Administration Rules** seeking orders of this court to compel the Respondent, who is the administrator of the estate of the deceased, to sign, execute and or attest the mutation forms to enable the applicant obtain title to her portion of land. In the alternative, the Applicant prayed that if the Respondent fails to act in the manner prayed above, the Deputy Registrar of this court do sign, execute and or attest the said mutation forms on behalf of the Respondent. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of the Applicant. The application is opposed. The Respondent filed a replying affidavit in opposition to the application. He essentially deponed that he had not refused or failed to perform his duty as the administrator of the estate. He swore that the mode of re-parceling that was proposed by the Applicant was not tenable because the proposed road of access would pass over a grave belonging to a mother of a dependant. The Respondent proposes that the status quo be maintained.

At the hearing of the application, this court heard oral rival submission made by Mr. Ranja for the Applicant and Mr. Kimani for the Respondent. The issue for determination by this court is whether the prayer sought by the Applicant is merited and should be allowed. This court noted that on 26th September 2011, the parties to this application entered into a consent order whereby it was agreed that the two parcels of land constituting the subject matter of this application, being LR.Nos Muguga/Jet Scheme/2887 and Muguga/Jet Scheme/2888 which was originally registered as LR.No.Muguga/Jet Scheme/938 forming part of the estate of the deceased, be re-parceled or redistributed by the District Surveyor with the joint participation of both the Applicant and the Respondent through their duly appointed surveyors, if they so prefer as they may prefer. According to a letter dated 2nd March 2012 written to the court by the District Surveyor Kiambu, he noted that the suggested mode of re-parceling was feasible although there were challenges noted on the ground. He made the following remarks:

“Although we had suggested a re-parceling in the mode shown on sketch No.1 and even gone ahead to mark approximate boundaries and drawn a mutation showing the same, a revisit in the circumstance leading to the initial survey and also the recent ground visit revealed the following about the survey.”

The surveyor then goes ahead to state that the Respondent had physically occupied a certain portion of land and also that the Applicant’s proposed road of access would pass through a portion where her mother was buried. The claim by the Respondent that the land cannot be re-parceled is therefore made on the basis of preservation of his self-interest. The Applicant does not mind the road to pass through the grave of her mother. In the premises therefore, this court orders the Respondent to sign the mutation form as compiled by the District Surveyor within thirty (30) days of today’s date, or in default thereof the Deputy Registrar of this court shall sign the said form together with any other conveyancing documents so as to give effect to the order earlier given by this court.

The Respondent shall pay the cost of this application.

DATED IN NAIROBI THIS 13TH DAY OF MAY 2013

L. KIMARU
JUDGE