

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.112 OF 1989

IN THE MATTER OF ESTATE OF GAICHUHIA MUHINGO - DECEASED

AND

ANNA WAMUYU MUHINGO.....APPLICANT

VERSUS

JOSEPH MURIUKI MUHINGO.....RESPONDENT

RULING

On 4th January 2011, this court made an order in the following terms:-

“1. THAT the District Surveyor Nyeri be and is hereby ordered to visit the land in dispute being L.R. No.Konyu/Baricho/91 to do a subdivision which ensures that the permanent house built on the suit land is on the portion to be transmitted to JOSEPH MURIUKI MUHINGO.

2. THAT Surveyor to take into account the views of both JOSEPH MURIUKI MUHINGO, ANNA WAMUYU MUHINGO and PAUL GACHARI GACHONDE in order to get the best and reasonable mode of subdivision.

3. THAT the parties herein being JOSEPH MURIUKI MUHINGO and PAUL GACHARI GACHONDE to meet the surveyors costs in equal measure.

4. THAT the District Surveyor Nyeri be and is hereby ordered to visit the land and file his report within the next (30) thirty days.

5. THAT the matter to be mentioned on 20th January 2012 for further orders and directions.”

On 20th January 2012, when this matter came up for mention, Miss Kabethi, learned counsel for the objector confirmed to this court that the District Surveyor, Nyeri, had visited the land in dispute i.e. L.R. No.Konyu/Baricho/91 in compliance with the abovementioned order. By that time the surveyor had not filed his report hence the matter was adjourned to 15th June 2012 for mention for further orders and directions. On the aforesaid date both M/S Kabethi, learned advocate for the objector and Mr. Baru, Learned advocate for the petitioner made brief submissions on how the land should be subdivided. M/S Kabethi was of the view that her client was ready to take any side of the land so long as the land is split into two equal portions. Mr. Baru on his part was of the view that the land be subdivided in such a way that the petitioner gets a wider footage to ensure the house fell on his side.

I have considered the surveyor's report plus the divergent submissions from both sides. It would appear from the surveyor's report that the most appropriate and fair manner of subdivision is that suggesting to have the land split into two equal portions (as per sketch A). I order that **L.R. No.Konyu/Baricho/91** be subdivided as shown in sketch A of the District Surveyor's report dated 23rd January 2013. Each party to meet his or her own costs.

Dated, signed and delivered in open court at Nyeri this 23rd day of August, 2013.

J. K. SERGON

JUDGE

In the presence of Baru for the Petitioner

N/A for Kabethi for Objector