



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT MERU**

**Succession  
Cause 431  
of 2005**

**SARAFINA NCHOORO  
M'IKIARA .....  
PETITIONER**

**VERSUS**

**SABINA NCHABIRA  
M'MUTUNGA .....  
RESPONDENT**

**JUDGMENT**

This judgment is further to the ruling of this court delivered on 28<sup>th</sup> June 2007. That ruling related to an application dated 5<sup>th</sup> December 2005. The petitioner by that application sought to restrain Sabina Nchabira M'Mutunga from interfering with the deceased property and it also sought orders of inhibition to be issued to restrain the dealing of the suit property that is, *Nkuene/L-Mikambune/1061*. The background of the matter is that Sabina sued the deceased M'Ikiara M'Ritha deceased but during his lifetime at Land Dispute Tribunal Case Number 13 of 2004. The tribunal awarded her one acre of the deceased property *Nkuene/L-Mikambune/1061*. The award was adopted as the judgment of the court in Meru CM LDT number 31 of 2004. The petitioner alleged in her affidavit that Sabina obtained *ex parte* order after the death of the deceased in the lower court matter where the deceased property was ordered to be sub divided. It was also alleged that Sabina obtained an order for such sub division to be executed by the executive officer of the court. In carrying out the sub division, it was alleged that Sabina went contrary to the directions of the deceased. Justice Lenaola who heard the application dated 5<sup>th</sup> December 2005 ruled on 28<sup>th</sup> June 2007 by giving orders of inhibition to restrict the dealings over the suit property. In part, the judge had this to say in the said ruling:-

***“So that no more disorder is perpetuated in respect of this estate and to secure all parties, I shall allow prayer two and three of the application dated 5<sup>th</sup> December 2005 but so that the respondents (Sabina) entitlement is quickly resolved, I shall order parties to bring forth evidence by a manner to be agreed to determine one question; what portion (being one (i) of L.R. Number Nkuene/L-Mikambune/1061) is the respondent entitled to?”***

The matter fell upon me to decide where the one acre of Sabina falls on the suit property. The matter came up for mention before me on 29<sup>th</sup> October 2009. On that day, it was fixed for hearing by consent of all parties for 16<sup>th</sup> February 2010. On 16<sup>th</sup> February 2010, counsel for Sabina did not attend court. The case proceeded for hearing after the court ruled that the matter had been fixed for hearing by consent. During the hearing, Sabina who was present refused to cross examine the witnesses and declined to give evidence in support of her case. The petitioner and her witnesses stated that the deceased before death had caused the suit property to be sub divided and the mutation forms in that regard had been registered in the lands office. Those mutation forms were submitted in evidence before court. Martha Mugure Charles, PW2 said that she had entered into an agreement to buy quarter acre of the suit property from the deceased in his lifetime. After that agreement, the deceased called surveyors who excised quarter acre from the deceased land. She was given that quarter acre of land. On being shown the mutation form, she identified her quarter acre as the one marked C. PW1 identified the other portions of the land as belonging to individual beneficiaries as follows:-

(i) *Marked on the mutation form "E" was to go to Frankline Mugambi.*

(ii) *Marked on mutation "A" was to go to Sabina Nchabira*

(iii) *Marked on mutation form "B" was to go to Joseph Mutwiri*

PW3 the petitioner and the wife of the deceased confirmed the evidence of PW1 and two. She ended her testimony by saying that she desired to divide the land of the deceased in accordance to his wishes. Having received that evidence which was not challenged by Sabina, I find that the interest of justice would best be served by allowing subdivision of the deceased property in accordance with his wishes and in accordance to the possession on the ground. I grant the following judgment:-

**1. *I order that a grant be issued to Sarafina Ncooro Mutwaikiara and the same be confirmed in the respect of parcel number Nkuene/L-Mikumbune/1061. The sub division of that parcel shall be as per mutation form dated 18<sup>th</sup> February 2005 presented to the land office for registration on 5<sup>th</sup> April 2005 which is as follows:-***

(i) ***"A" on the said mutation form measuring 0.40 Ha. To go to Sabina Nchabira M'Mutunga absolutely.***

(ii) ***"B" on the said mutation measuring 0.34 ha. To go to Geoffrey Mutwiri absolutely.***

(iii) ***"C" on the said mutation measuring 0.10 Ha. To Martha Mugure Charles absolutely.***

(iv) ***"D" on the said mutation form measuring 0.10 Ha. To go to Grace Wanja absolutely.***

(v) ***"E" on the said mutation form measuring 0.34 ha. To Frankline Mugambi absolutely.***

**2. *There shall be no orders as to costs.***

Dated and delivered at Meru this 7<sup>th</sup> day of May 2010.

**MARY KASANGO  
JUDGE**