

IN THE MATTER OF THE ESTATE OF KIBANGA ARAP MAINA (DECEASED)

RULING

Before me is an application by way of Ex-parte Chamber Summons brought by the Applicants under Rule 49 of Probate and Administration Rules Cap. 160 Laws of Kenya and Section 40 and 41 of the Registered Land Act Cap 300 seeking orders that the Deputy Registrar of the Court be allowed to execute to sub-divide land parcel **LR. NO. TULWET/TULWET/BLOCK 3/(RIRONI) 98** and thereafter the transfer forms for the various parcels to the proprietors shown on the Letter of Confirmation.

The application is premised on the grounds as stated in the body of the Chamber Summons and supported by an affidavit sworn by **ALLAN RIMUI NGIGI MBUGUA**.

The facts which gave rise to this application briefly may be stated. One **WANJIKU MBUGUA** sold the suit land being LR. NO. TULWET/TULWET/BLOCK 3 (RIRONI) 98 to **KIBANGA ARAP MAINA**. She applied to AINABKOI LAND CONTROL BOARD for consent to transfer the suit land to the Purchaser. The consent was granted on 21st February, 1993. The said KIBANGA ARAP MAINA took possession while the documents were handed over to BIRECH & CO. ADVOCATES to transact the transfer.

The said Kibanga Arap Maina continued living and utilizing the suit property presuming that the suit land had been transferred to him until 10th September, 1999 when he died intestate and KIPTOGOM BANGA petitioned for the Grant of Letters of Administration which was issued on 27th September, 2001. The same was confirmed on 22nd May, 2003 and the estate which was comprised only of the suit land was distributed as follows:-

1. KIPTOGOM BANGA – TITLE NO. TULWET/TULWET/BLOCK 3/RIRONI/98 – 7.3 HA.
2. MARY MUREI – TITLE NO. TULWET/TULWET/BLOCK 3/RIRONI/98 – 4 HA.
3. STANLEY MUREI – TITLE NO. TULWET/TULWET/BLOCK 3/RIRONI/98 – 3.3 HA.

When the documents were presented to the Lands Office to effect Transfer it was discovered that the suit land was still registered in the name of the former seller WANJIKU MBUGUA and the transfer documents were still held by M/s. Birech & Co. Advocates who later released them to the Counsel for the applicants who now applies to this Court for orders as stated above.

After I have considered the application in light of the affidavit evidence on record as well as the annexures I am persuaded to exercise my discretion in favour of the applicant.

Accordingly, the application is granted in terms of prayer 1 and 2 of the Ex-parte Chamber Summons dated 23rd April, 2009.

DELIVERED AND DATED AT ELDORET THIS 19TH DAY OF OCTOBER, 2009.

J. L. A. OSIEMO

JUDGE