

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1568 OF 2009

IN THE MATTER OF THE ESTATE OF STEPHEN KIRIBA KINORO (DECEASED)

JOHN MUCHIRI KIRIBA.....APPLICANT

R U L I N G

1. Muigai J made a ruling on distribution of the estate on the 30th of June 2016.

Following the said ruling a confirmed grant was issued. The property subject of this ruling being property **L.R. No. Ndumberi/Ting'ang'a/1633** was to be shared between three persons. George Ndung'u Kiriba was to get ½ share and the other ½ was to be shared equally between John Muchiri Kiriba and Peter Kamau Kiriba.

2. The two, namely, Peter Kamau Kiriba and John Muchiri Kiriba arising from the ruling have an issue as to which portion of their half each should take hence prayer 4, 5 and 6 of the application of 8th February 2019 by John Muchiri Kiriba seeking to have the court adopt his surveyor's report; for the Deputy Registrar to execute transmission documents and for release of the title document being held by Peter Kamau Kiriba.

3. John Muchiri's contestation is that he settled on the upper portion allocated to them for over 20 years, has developed the same and therefore he should be allowed to continue with the portion as demonstrated by his proposed sub-division.

4. On the other hand, Peter Muchiri claims that the area being proposed for him is steep and narrow and therefore unfair to him. He craved of leave of court to file his own proposal on the subdivision. Leave was granted and he duly filed a surveyor's report.

5. The two survey Reports and sketch plans are completely at variance even in terms of the sketches and in my considered view for the court to appreciate both of them and fairly determine the matter the makers will have to give more details, make explanations and if necessary be subjected to cross examination.

6. Consequently, I hereby direct that Eng. J. M. Gatome of Gatome & Associates and N. M. Purity of Earthscope Survey Services do appear in court on a date to be agreed in regard to their respective reports.

Dated and Delivered in Nairobi on this 14TH day of NOVEMBER 2019.

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ALI-ARONI

JUDGE