



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

IN THE MATTER OF TRANSFER OF NAIROBI COUNTY NJIRU AGERIA

**DEVELOPMENT CO.LTD L.R NO.13468/306 IR NO.56880 FROM TRANSFER FOR PETER
MWAURA NJOROGE (DECEASED) TO THE TRANSFEREE JOHN K MAINA**

MISC. APP.ELC NO. 313 OF 2016

JOHN KARIUKI MAINA.....APPLICANT

VERSUS

MRS.ANN WANJIRU NGATIA.....RESPONDENT

RULING

1. The applicant in this matter is acting in person. He filed a chamber summons dated **17th November 2016**, in which he seeks orders that **LR No. 13468/306** registered in the name of **Peter Mwaaura Njoroge** be transferred into his name.
2. The applicant contends that he had been assaulted by **Peter Mwaaura Njoroge** on **6th July 2012**. The case was reported to police and while the same was undergoing investigations, the applicant and the said **Peter Mwaaura Njoroge** signed a memorandum of commitment in which the said **Peter Mwaaura Njoroge** agreed to give him general damages of **Kshs.100,000/=** in compensation for the injuries he sustained.
3. The memorandum of commitment was signed before an advocate on **30th July 2012**, wherein the said **Peter Mwaaura Njoroge** acknowledged receipt of **Kshs.25,000/=** on execution of the commitment. The balance of **Kshs.75,000/=** was to be paid by monthly instalments of **Kshs.5,000/=**. In default the applicant was to have the land owned by **Peter Mwaaura Njoroge** transferred to him.
4. **Peter Mwaaura Njoroge** (deceased) died on **21st August 2013**. The applicant has now brought a miscellaneous application in which he has named the wife of the deceased as the Respondent.
5. I have gone through the applicant's application and must say at the outset that the same is incompetent and cannot be allowed. Firstly, the commitment was between the applicant and the deceased and no such orders can be given on a miscellaneous application. Secondly a property of a deceased person cannot be dealt with unless there is a process of succession which is carried out, a grant issued and the same is confirmed.
6. The Respondent herein is not a personal representative of the deceased and no claim can be brought against her until after she obtains grant of letter of administration or she is cited in accordance with the

law of Succession Act. I therefore find that the applicant's application is misconceived. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* this *20th* day of *March 2017*

E.O .OBAGA

JUDGE

In the presence of ;-

The Applicant

No appearance on the part of the Respondent

Court Assistant :Kevin

E.O .OBAGA

JUDGE