



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**PROBATE AND ADMINISTRATION DIVISION**  
**SUCCESSION CAUSE NO. 3065 OF 2001**  
**IN THE MATTER OF THE ESTATE OF TERESIA WANJIKU MAINA (DECEASED)**

**JAMES MAINA MBUGUA .....APPLICANT**

**- VERSUS -**

**JOHN KARENGE MBUGUA.....RESPONDENT**

**R U L I N G**

1. In his Chamber Summons dated 22<sup>nd</sup> May 2014 brought under **Section 3 A** of the **law of Succession Act**, the Applicant James Maina Mbugua (hereinafter the Applicant) seeks in the main, that the Deputy Registrar of the High Court do sign transfer Form R.L.7 for the title Number Dagoretti/Riruta/5751.
2. The grounds of the application as contained in the face of the application are that the Applicant is a grandson of the deceased herein who died on 24<sup>th</sup> November 2000. That a grant of letters of administration intestate was issued to Francis Munyua and Hannah Wanjiku Munyua on 12<sup>th</sup> November 2002 and a certificate of confirmation of the said grant issued on 26<sup>th</sup> May 2003, and later amended on 19<sup>th</sup> May 2008. The Applicant alleges that John Karengi Mbugua (hereinafter the Respondent) despite pleas by the Applicant's house, has refused to sign Form RL 7 Title No. Dagoretti/Riruta/5751 in order for the property to be transferred to the Applicant and the Respondent.
3. The Applicant has sworn an affidavit dated 22<sup>nd</sup> May 2014 in which he deposes that he is one of the beneficiaries of the deceased's Estate, and that the Respondent and himself were to be the registered owners of the property known as Dagoretti/Riruta/5751. That the transfer forms were prepared and signed by both Administrators and himself, but the Respondent has refused to sign them.
4. Mr. Kamau learned counsel for the Applicant submitted that both the Applicant and the Respondent are beneficiaries of the deceased's Estate. That Dagoretti/Riruta/5147 was subdivided into nine plots out of which three plots were given to the Applicant and the Respondent jointly as per the certificate of confirmation of grant. Both the Applicant and the Respondent were entitled to get the three portions jointly. Each got one portion and the remaining portion is the L.R. No. Dagoretti/Riruta/5751 the subject of this application.
5. Learned counsel argued that both the Administrators and the Applicant signed the transfer forms

but the Respondent herein has refused to sign his part despite pleas from the other beneficiaries. Counsel urged the court to order the parcel of land to be subdivided into two portions one of which shall be transferred to the Applicant while the other remains with the Administrators, until such time as the Respondent will be ready to get his portion. Counsel pointed out that in his Replying Affidavit the Respondent raises issues relating to another estate which is irrelevant to this cause. That in any event, if he was dissatisfied with the distribution he should have applied for revocation of the grant. Counsel urged the court to grant the orders sought in the application.

6. Mr. Kinuthia, learned counsel for the Respondent, submitted that the deceased was the mother of three sons, Mbugua Maina Gitau, Francis Munyua Maina and John Wakaria Maina who are all deceased. That Mbugua Maina Gitau had two wives who are the mothers of the Respondent and Applicant respectively. That the Respondent and the Applicant represented the first and second houses of Mbugua Maina Gitau respectively. That the Respondent was given two out of the nine portions which is now Dagoretti/Riruta/5751 and Dagoretti/Riruta/5752 respectively while the Applicant was given one out of the nine portions which is now Dagoretti/Riruta/5745.
7. Mr. Kinuthia further submitted that the Applicant filed an application on 17<sup>th</sup> February 2010 which is similar to his instant application and which sought the same orders, in succession cause 2516 of 2000 High Court at Milimani Law Courts, in the matter of the estate of Mbugua Maina (deceased). The said application has never been heard or determined due to the Applicant's non-attendance. Mr. Kinuthia argued that Mr. Ojwang, the then Advocate for the Respondent's deceased father informed the Respondent that his late father had expressed his wish of subdividing his property into two portions amongst his two wives in a certain manner.
8. Upon careful consideration of the grounds of the application and the affidavits for and against the application and upon considering the rival submissions in the application, I note that both parties have annexed a copy of the certificate of confirmation of grant in the Estate of Teresia Wanjiku Maina issued to Francis Munyua and Hannah Wanjiku Munyua on 16<sup>th</sup> July 2002 and amended on 19<sup>th</sup> May 2008.
9. That certificate for confirmation indicates that the property of the deceased was known as L.R. No. Dagoretti/Riruta/5147. The said property was sub-divided into nine portions which were distributed as follows:

Francis Munyua Maina – 4 out of nine acres

John Karengi Mbugua

James Maina Mbugua      3 out of nine acres

Julius Maina Nakaria

Francis Maina Wakaria      2 out of nine acres

There is no evidence that the Respondent herein protested this mode of distribution. He cannot come to court this late in the day and purport to muddy the waters by bringing in another estate that is not before this court. It is apparent that he is quite content to hold the estate at ransom so that the process of distribution has, not been concluded eight years since the confirmation of the grant.

For the foregoing reasons this court finds that the Applicant's application dated 22<sup>nd</sup> may 2014 has merit.

**SIGNED DATED** and **DELIVERED** in open court this **8<sup>th</sup> day of February 2016.**

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**L. A. ACHODE**

**JUDGE**