

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 108 OF 2014

KENNETH MAINA KABUGA PLAINTIFF/RESPONDENT

VERSUS

NANCY NJERI KABUGA 1ST DEFENDANT/APPLICANT

JANE WANJIKU MUGAMBI 2ND DEFENDANT/APPLICANT

RULING

1. By a Notice of Motion dated 11th May 2023, Nancy Njeri Kabuga and Jane Wanjiku Mugambi (the Applicants) pray for orders as follows;

1) That this Honourable Court cancels titles to Land parcel numbers Nyeri/Lusoi/5813, Nyeri/Lusoi/5814, Nyeri/Lusoi/5815, Nyeri/Lusoi/5816, Nyeri/Lusoi/5817, Nyeri/Lusoi/5818, Nyeri/Lusoi/5819 and Nyeri /Lusoi/5820 the resultant titles to Nyeri/Lusoi/1101;

2) That the said parcels of land be amalgamated and revert to Nyeri/Lusoi/1101; and

3) That cost of this Application be provided for.

2. The application is supported by an affidavit sworn by the 1st Applicant and is premised on the grounds:

- i. That the parties herein were joint proprietors to land parcel number Nyeri/Lusoi/1101 and agreed after mediation to share the land parcel equally;**
- ii. That the Respondent herein went ahead to purportedly subdivide the said parcel of land without involving the Applicants herein;**
- iii. That the purported subdivision was unprocedural as the Applicants herein did not sign any of the requisite documents; and**
- iv. That further, some of the allegedly issued titles do not tally with Certificates of Search issued by the Land Registrar.**

3. Kenneth Kabuga (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 21st June 2023, the Respondent avers that the application is frivolous, vexatious, bad in law and an abuse of the court process. The Respondent avers that the land was subdivided equally as per

the Mediation agreement and in accordance with the Court Orders issued on 7th October 2020.

4. The Respondent further avers that all the parties herein gave out their documents to enable the subdivision to be carried out and that the mistake done during the subdivision has since been rectified and reflected in the search certificates and the title deeds.
5. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
6. By their application before the court, the two Applicants pray for an order of cancellation of the resultant titles arising from the subdivision of land parcel number Nyeri/Lusoi/1101. It is the Applicants case that together with the Respondent herein, they were the joint proprietors of the said parcel of land which following a mediation agreement, they had agreed to share equally. The Applicants accuse the Respondent of unilaterally proceeding to subdivide the land without their involvement. It

is further their case that the resultant titles do not tally with the records held by the Land Registrar Nyeri.

7. The Respondent denies the accusation and avers that the Applicants had given out their documents to facilitate the subdivision. In addition, the Respondent avers that the errors that occurred during the subdivision have since been rectified.
8. By a Plaint dated 21st May 2024, the Respondent herein had sought an order that land parcel number Nyeri/Lusoi/1101 be subdivided into three (3) equal portions measuring 6.7 Ha each and that the resultant portions be transferred to each of the parties. The Respondent further sought an order that if the Applicants failed to co-operate in the subdivision, the Executive Officer of the court be authorized to execute the relevant documents.
9. From the material placed before the court, it was not in dispute that the Respondent and the Applicants herein had jointly purchased the parcel of land known as Nyeri/Lusoi/1101 said to be measuring 18.21 Ha. It was also apparent that the Respondent had been frustrated in his efforts to have the land

subdivided so that each of the parties could get his/her share and hence the institution of this suit.

10. The parties thereafter agreed to go for mediation and on 29th July 2020, a Mediation Report dated 7th July 2020 was adopted by consent as an order of the court. The said court order provides as follows:

“IT IS HEREBY ORDERED BY CONSENT”

- 1. That the parties in dispute, have agreed to share the portion of land, (NYERI/LUSOI PARCEL NO.1101) in dispute 15 acres each amongst ourselves;**
- 2. That each and every party shall have a portion of land together with a benefit of the tarmac road that is adjacent to the land;**
- 3. That the houses built by one Kenneth Kabuga Maina shall remain where they have been built and no party shall claim them, neither shall any party claim the portion of land where houses are situated;**
- 4. That where Nancy Njeri Kabuga stays still remain her place and no one should claim the house;**

- 5. That each party have agreed to share the portion of land equally amongst themselves without any dispute;**
- 6. That a report from (a) surveyor regarding the sub division of (the) land shall be agreeable by all;**
- 7. That Nancy Njeri Kabuga shall remove the restriction placed in the land within a period of 30 days from the date (of) this agreement for the surveyor assessment;**
- 8. That no party should send anyone /agent or any representative to threaten Nancy Njeri Kabuga in anyway whatsoever regarding the parcel of land; and**
- 9. That each party shall contribute to the payment of the surveyor or as per the agreed dates amongst themselves.”**

11. It was apparent that in accordance with the Mediation Agreement, the parties subsequently engaged the County Surveyor Nyeri who visited the suit property and prepared a Report dated 7th December 2023. The Survey Report

concludes that the land was divided equally into three (3) parcels each approximately measuring 5.96 Ha (14.73 acres).

12. By their application before the court the Applicants accuse the Respondent of unilaterally carrying out the survey and that the resulting subdivisions are unprocedural as the Applicants did not participate in the exercise. That contention is however not supported by any facts. In his Report the County Surveyor has listed those who were present during the survey exercise and the Applicants names appear as Number 1 and 2 of those who were in attendance.
13. At paragraph 13 of the 1st Applicant's Affidavit filed in support of the application she contends that they had agreed that in regard to the portion of land adjacent to the tarmac, she would get the part in the middle which is Nyeri/Lusoi/5814. There was however no evidence of any such agreement. That position is also not covered by the Mediation Agreement.
14. In the premises, I did not find any merit in the Motion dated 11th May 2023. The same is dismissed with costs to the Respondent.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 16th day of October, 2025

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**J.O. OLOLA
JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms. Mwikali Advocate for the Applicants
- c) Mr. Igati Mwai Advocate for the Respondent