



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 277 OF 1990

HANNAH NJOKI KABAIKU
APPLICANT

VERSUS

DAVID KARANJA
KABAIKU.....RESPONDENT

RULING

1. The application dated 30/09/2019 was abandoned by the administration as they managed to undertake the subdivision and transmission to all beneficiaries.
2. The summons dated 11/05/2022 seeks to re-open the survey on the basis that David Kabaiku was never involved, never consented and that the survey/subdivision is destructive of the living arrangement and a road allocation runs through the burial site where he has buried his son.
3. The applicant seeks the summoning of an unnamed surveyor who participated in the botched mediation that ended on 30/08/2021. It is note worthy that in hearing this matter and upon consent of the parties the court summoned two surveyors on 09/12/2024:
 - (i) Benard Mwai

(ii) Nicholas Otieno

4. On 13/02/2015 the Respondent present Nicholas Otieno who extensively testified on the work he undertook. It was his evidence that he undertook the work pursuant to a Court order and was provided security form the Njoro Police Station.
5. That his survey was a continuation of a previous plan drawn thereon. That the order for survey was issued in 2019. That he undertook the survey, placed beacons and prepared the survey computation form that forms part of the Application dated 30/0/2019.
6. It was his evidence that all beneficiaries were accommodated. No survey line was interfering with existing developments. That the survey was undertaken in the presence of the Applicant who in fact handed a letter from an advocate.
7. The witness noted a structure under construction belonging to one Francis Maina at (foundation stage) that sits on the access road and encroaches on Plot No. 6.
8. The witness was aware of the survey proposal by the Applicant which he criticized as unreliable. That he was privy to 3 more proposals by David Karanja which he equally criticized as unreliable.
9. The witness testified of not being shown any graves while undertaking the work. And that upon undertaking the survey, some beneficiaries started selling. That if the survey

plan was unworkable he would have offered alternative suggestion. The witness concurred that a 2nd opinion by a surveyor might field another opinion.

10. The Applicant was to call Benard Mwai and despite repeated opportunities by the Court, he never presented the expert.

The relief sought in this application are that:

- a. The Court summons the surveyor engaged during mediation to select and provide the best suited sketch – plan for re-survey and subdivision.
- b. That the court directs that the re-survey be adopted as an order of the court.

11. This court is unable to find any merit in the application dated 11/05/2022 for the following reasons:

- (i) The Applicant had an opportunity to engage his own surveyor to provide an alternative proposal prior to 30/09/2019 and subsequent up to now but he never undertook the same.
- (ii) The Applicant was afforded an opportunity to call a surveyor Benard Mwai and summons were issued in this regard from 03/10/2024 and the summons were repeatedly extended from 03/10/2024 to the 28/10/2025 a period of over 10 months but eventually abandoned his quest opting for reliance on pleading filed and that the court can send a neutral surveyor. The Applicant thus sought for the ruling.

- (iii) The Applicant has not tendered evidence of the alleged graves and who they belong to if any.
- (iv) The Respondent contends that the placing of graves by the Applicant is intended to forestall conclusion of the probate.
- (v) That the probate is substantially settled and that no basis been laid to review the survey undertaken

12.I am thus inclined to dismiss this Application. I grant costs to the Respondent.

13.Any party aggrieved may move to the Court of Appeal. This Probate file shall be marked as closed.

Dated, Signed and delivered at Nakuru this 19th day of February, 2026

Mohochi S.M
JUDGE