



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**E.L.C. CIVIL SUIT NO. 412 OF 2011**

**HANNAH NYOKABI KARIUKI MURIHIA & ESTHER**

**NDUTA KARIUKI (Suing as administrators of the**

**Estate of DANIEL KARIUKI MURIHIA (Deceased).....PLAINTIFFS**

**VERSUS**

**PAUL KANGETHE KIRAI.....1<sup>ST</sup> DEFENDANT**

**DAVID MBURU KIRAI.....2<sup>ND</sup> DEFENDANT**

**WILLIAM WAIHUMBU KIRAI.....3<sup>RD</sup> DEFENDANT**

**CHARLES MURIHIA KIRAI.....4<sup>TH</sup> DEFENDANT**

**CHARLES WAWERU KIRAI.....5<sup>TH</sup> DEFENDANT**

**JAMES MURIHIA KIRAI.....6<sup>TH</sup> DEFENDANT**

**VIRGINIA MUMBI KIRAI.....7<sup>TH</sup> DEFENDANT**

**PATRICK NJAU KIRAI.....8<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. Daniel Kariuki Murihia and Samuel Kirai Murihia, who were brothers, and who have since died, acquired the parcels of land known as Dagoretti/Riruta/3465 and 3466. Daniel Kariuki Murihia was the father of the Plaintiffs while Samuel Kirai Murihia was the father of the Defendants. A three storeyed building is erected on Dagoretti/Riruta/3465 from which the Plaintiffs and Defendants derive rent and there is no dispute over this parcel of land.

2. The Plaintiffs claim is that the late Samuel Kirai Murihia and the late Daniel Kirai Murihia purchased Dagoretti/Riruta/3466 (“the Suit Property”) which did not have a title since the process of subdivision had not been concluded. At a family meeting held on or about 30/5/2010, the two families agreed to share the two properties equally and that a surveyor was to be tasked to subdivide the Suit Property. The Plaintiffs’ claim that the Defendants have refused to cooperate to have the Suit Property surveyed and subdivided so that each family can have its share but instead the Defendants have proceeded to put up structures on the Plaintiff’s portion of the Suit property thereby denying the Plaintiffs the enjoyment of their portion of the Suit Property.

3. The Plaintiffs seek a permanent and perpetual injunction against the Defendants to stop them from interfering with L.R. No. Dagoretti/Riruta/3465; an order for the Defendants to allow the subdivision and sharing of Dagoretti/Riruta/3465; an order for the Defendants to produce the status report for the Suit Property to the Plaintiffs and all relevant documents in relation to the two plots; general damages; costs and interest.

4. The Defendants did not file a defence. Samuel Ngure Kariuki gave evidence for the Plaintiffs on behalf of Esther Nduta Kariuki who he stated was paralysed on one side of her body and unable to attend court. The Defence did not call any evidence.

5. Parties filed submissions. It is not in contention that each family gets its share from the rental building erected on Dagoretti/Riruta/3465. What is in contention is the Suit Property. The Defendants admit in their submissions that they are in possession of the said land and are constructing on it. The Defendant contended that the Suit Property forms part of the estates of the deceased brothers. They contended that the beneficiaries having taken out letters of administrations of the estates of the deceased persons, then it was the High Court that has jurisdiction pursuant to Section 7 of the Law of Succession Act to deal with matters arising under that law. They contended that the Law of Succession Act and the Probate and Succession Rules provide for the procedure in succession matters and the distribution of the assets of the estate of a deceased person. They urged that the issues raised in this suit should be canvassed in a succession cause before the family division of the High Court and not the Environment and Land Court.

6. The court has looked at the documents produced by the Plaintiffs. They include a title deed issued to Daniel Kariuki Murihia and Samuel Kirai Murihia on 20/5/1992 for Dagoretti/Riruta/3465 measuring 0.05 ha and a Certificate of Confirmation of Grant in respect of the late Daniel Murihia Kariuki. The schedule describing the property mentions the floors, shops or rooms of the building that were being allocated to the beneficiaries on Dagoretti/Riruta/3465. The Suit Property is not listed among the assets being distributed to the beneficiaries. The copy of the agreement for division of shares of Dagoretti/Riruta/3465 dated 20/12/1995 entered into by Daniel Kariuki Murihia and Samuel Kirai Murihia set out how the parties were to subdivide and take shares in the building developed on this property and the undeveloped part of the said property.

7. There were no records or documents produced to show how the late Daniel Kariuki Murihia and Samuel Kirai Murihia acquired the Suit Property. The parties do not dispute this fact. The Plaintiffs claim that the Defendants are in possession of the original title for Dagoretti/Riruta/3465 and the documents for the Suit Property and have refused to cooperate in getting the land subdivided. The Defendants admitted that they were in occupation of the Suit Property.

8. The issue for determination is whether the court should grant the orders sought in the plaint. It will serve no useful purpose to grant prayers 1 and 2 since there is no dispute over this parcel of land, and the Plaintiffs and Defendants are sharing out rent in a peaceful manner.

9. The court grants prayer 3 of the plaint together with the costs of the suit. The Defendants are directed to cooperate with the Plaintiffs in having the two parcels of land subdivided and titles issued in accordance with the confirmation of grant bearing in mind the laws on the restriction on the minimum sizes of land.

Dated and delivered at Nairobi this 26<sup>th</sup> day of November 2018.

**K. BOR**

JUDGE

In the presence of: -

No appearance for the parties

Mr. V. Owuor- Court Assistant