



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERUGOYA**

**SUCCESSION CAUSE NO. 86 OF 2012**

**IN THE MATTER OF THE ESTATE OF GATHIMBA MWARITHA.....DECEASED**

**CHIENGO GATHIMBA.....APPLICANT**

**VERSUS**

**MUGO MWARITHA KATHIMBA.....RESPONDENT**

**RULING**

1. I have considered the application dated 7/3/19. The respondent was severally served with the application and hearing notice. He has not filed any replying affidavit nor has he attended court. The application seeks to execute the grant but the respondent has failed to avail the titles, and other documents to facilitate the sub-division, transfer and registration of the parcels of land.

2. In the alternative he prays that the Executive Officer to sign the documents on behalf of the administrator and the Land Registrar to dispense with the production of the original title.

3. I find that the application is not opposed. **Section 47 of Law of Succession Act** gives court jurisdiction to entertain any application and determine any dispute while **Rule 73 Probate and Administration Rules** provides:-

***“Nothing in these rules shall limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or prevent abuse.”***

4. The respondent is the administrator of the estate and has frustrated efforts to have the grant executed by refusing to sign the necessary document and produce original documents. It is in the interest of justice that the grant be executed and the

beneficiaries get their shares. Nothing prevents this court from making the orders which the applicant is seeking in the application. I therefore allow the application as prayed.

**Dated at Kerugoya this 27<sup>th</sup> Day of February 2020.**

**L. W. GITARI**

**JUDGE**