



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**CIVIL APPEAL NO. 83 OF 2009**

**TABITHA NJOKI KAGANO.....APPELLANT**

**VERSUS**

**JACOB KINYUA KAGANO.....1ST RESPONDENT**

**SOLOMON MACHERE MUNGE .....2ND RESPONDENT**

**RULING**

1. The application dated 5<sup>th</sup> March 2015 seeks for the following orders:-

- (a) That the portion measuring 0.353 hectare out of Inoi/Thaita/2730 be transferred to the appellant.*
- (b) Production of the old title deed be dispensed with at the time of subdivision of the land number Inoi/Thaita/2730.*
- (c) The Deputy Registrar of this court be ordered to be signing all documents on behalf of the 1<sup>st</sup> respondent to facilitate subdivision and transfer of the land as per orders 1 & 2 above.*
- (d) The OCS Kerugoya police station to provide security at the time of survey.*

2. The affidavit of Tabitha Njoki Kagane supports the application. It is deposed that judgment in this appeal was delivered on 14/03/2013 to the effect that:-

- (a) The grant issued in Kerugoya Succession Cause No. 73 of 2002 be annulled and the certificate of confirmation of grant be cancelled.*
- (b) That L.R. No. Inoi/Thaita/2730 and 2732 be combined and be distributed as follows:-*
  - The 1<sup>st</sup> house of Jacob Kinyua Kigano gets 1/3 share.*
  - The 2<sup>nd</sup> house of Tabitha Kagano gets 2/3 share for herself and children.*

3. The two parcels 2730 and 2732 are separately registered in the names of Jacob Kinyua Kigano and Tabitha Njoki Kagano respectively and each parcel measures 1.06 hectares both totaling to 2.12 hectares. The court directed that the following consolidation of the two parcels, subdivision be done and each of the beneficiaries be bequeathed his share as follows:-

- Jacob Kinyua Kagano - 0.707 ha. (1/3 share)

- Tabitha Njoki Kagano - 1.413 ha. (2/3 share)

4. For the orders of the court to be executed and shares identified for the beneficiaries to be given to them, a portion of 0.353 ha. Has to be excised from L.R. 2730 and be registered in the name of the applicant Tabitha Njoki Kagano to make whole her share of 1.413 ha.

5. The prayers in the application are basically for execution of judgment by seeking for orders that the Land Registrar to execute the necessary documents for execution of subdivision of L.R. 2730 and transfer of the portion of 0.353 ha to the applicant.

6. It is perceived that the respondent may not be co-operative to surrender the original title or agree to sign the documents. He had appealed against the decision herein and lost in the Court of Appeal. The applicant fears that the respondent may resist the process of subdivision and therefore security may be required.

7. The respondent filed grounds of opposition dated 31/03/2017. It is alleged that there is an application pending in Kerugoya Misc. Succession No. 15 of 2016 which ought to be heard together with the present application. However, the nature of the application has not been explained. Neither has it been explained how it relates to the present application.

8. The respondent has not in any way argued or opposed the application in any material particulars. He has not referred to the judgment in this appeal which the applicant seeks to execute.

9. The respondent refers to the interests of an interested party who has not been named. He has not even denied that his appeal against this court's judgment was dismissed by the Nyeri Court of Appeal.

10. In respect of the respondent's assertions, I make the following observations. Firstly that there is a valid judgment herein pending execution which was upheld by the Court of Appeal. The fact that the respondent appealed and was successful was revealed in the submissions of the applicant and was not denied by the respondent.

11. I have perused the contents of the judgment of Ong'udi, J. delivered on 1<sup>st</sup> March 2012. its contents support this application that what is remaining herein is only execution of the judgment.

12. I note that there is an application seeking revocation of grant filed on 28/08/2016 by the interested party. This was about three and half years after delivery of the judgment which was as a result of an appeal by the applicant against the confirmation of grant in Kerugoya Succession Cause No. 73 of 2002.

13. This application for revocation was filed after the appeal was concluded. It was either a misdirection on part of the applicant or was designed to defeat the execution of the judgment. It was wrong to file it in a civil appeal file which has already been concluded. It is my considered opinion that it cannot be entertained at this stage in the interests of justice.

14. I have considered all the issues arising from this application and find that the applicant has satisfied this court as to his entitlement to the orders sought.

15. The application is therefore merited and is allowed as prayed with no order as to costs.

16. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 20TH DAY OF SEPTEMBER, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mugambi for 2<sup>nd</sup> respondent**

**Ms. Ndorongo for Maina Kagio for applicant**