



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

**SUCCESSION CAUSE NO. 267 OF 2005**

*In the matter of the Estate of LAWRENCE KIMINJA MBUTHIA (Deceased)*

**PATRICK MBUTHIA KIMINJA.....1ST APPLICANT**

**LUCY WAMBUI KIMINJA.....2ND APPLICANT**

**CATHERINE WAIRIMU KYAMBO.....3RD APPLICANT**

**ANN WAMBURA KIMINJA.....4TH APPLICANT**

**JOHN GICOBBI KIMINJA.....5TH APPLICANT**

**VERSUS**

**FLORENCE MICHERE KIMINJA.....ADMINISTRATOR/RESPONDENT**

**R U L I N G**

The five applicants are children of the deceased Lawrence Kiminja Mbutia and the Administrator Florence Michere Kiminja who is the respondent herein. In their application dated 8th December 2014 seek for orders that the Deputy Registrar of this court be authorized to sign the relevant documents for execution of grant which was confirmed on 27/7/2007.

The deceased died intestate on 25/11/2001 and was survived by one widow and eight children. The widow who is the respondent herein filed this cause on 30/8/2005 and identified the applicants and three others as beneficiaries as follows:-

1. Patrick Mbutia
2. Catherine Wairimu
3. John Kiminja
4. Zakia Wangeci
5. Lucy Wambui
6. Ann Wambura

## 7. Peter Kinyua

On 29/5/2006, the petitioner/respondent was issued with letters of administration which were confirmed on 27/7/2007.

The estate was distributed in the following manner:-

- (a) John Gicobi Kiminja - Gaturi/Weru/4578, 4579, 4580, 4581 & 4582 – Wholly
- (b) Patrick M. Kiminja - Gaturi/Weru/4583 & 4584 – wholly
- (c) Jane Wangeci Kiminja - Gaturi/Weru/4585 – wholly
- (d) Florence Michere Kiminja – Gatur/Weru/4577 – 076 Ha.
- (e) Lucy Wambui Kiminja - “ “ - 0.40 Ha.
- (f) Ann Wambura Kiminja - “ “ - 0.40 Ha.
- (g) Cathrine Wairimu Kyambo - “ “ - 0.40 Ha.
- (h) Peter Kinyua Kiminja - Nthawa/Riandu/2864- wholly
- (i) Florence Michere Kiminja - Nthawa/Riandu/2865- wholly
- (j) Gakungi Maguru - Nthawa/Riandu/1761 - 0.30 Ha.
- (k) Redeemed Gospel Church Inc. - “ “ - 0.10 Ha.
- (l) Florence Michere Kiminja - the remaining balance
- (m) Joseph Alexander Kimani – ½ share Plot No. 64 B Ngurubani Market
- (n) Florence Michere Kiminja - Share with K.C.B.

The grounds supporting the application are contained in the affidavit of Patrick Mbutia Kiminja, the 1st Applicant who states that he has the authority of the 2nd, 3rd, 4th and 5th applicants to swear the affidavit.

It is deponed that the deceased had sub-divided his land parcels and given each child their shares but transfer had not been effected at the time of his death. Thereafter, their mother filed this cause and was appointed the administrator of the estate. The grant was then confirmed on 27/7/2007. The administrator has persistently refused to execute the grant to facilitate the beneficiaries getting their shares. All the beneficiaries are over 40 years old and are desirous of using their land.

The respondent has inter-meddled with the estate by selling part of it and pocketing the proceeds to the detriment of the beneficiaries. She has leased the estate of the deceased to 3rd parties and has therefore denied the beneficiaries their rights.

The respondent did not file a replying affidavit but appeared in court and opposed the application orally. She agreed that the land parcels are sub-divided according to the shares in the grant. She said that her children do not support her financially and she lives on the proceeds of leasing the land to outsiders. She states that she is sickly and needs money to buy medicine and thus the need to continue leasing out the entire land to raise cash for her support.

The respondent said that after the sub-division, about 19 metres remained beyond the river and she needs

to deal with who is going to get the excess. She wants to get the advice of the Land Registrar on how to deal with the excess portion.

She added that the applicants are working for gain but have refused to meet the expenses of executing the grant. She also owned up that she has 2 parcels of land in Riandu which are registered in the name of deceased and which she wanted to sell to support herself.

It is not in dispute that the grant was confirmed about 10 years ago and the estate distributed to the administrator and her children. The respondent admits that she has refused to sign for the execution of the grant giving two reasons:-

- i. That there is an excess portion which she wants to be advised by the Land Registrar in which to deal with.
- ii. That she needs to continue leasing the land in order to support herself.

The respondent has not explained why for about 10 years she has not solved the problem of the excess portion in consultation with the other beneficiaries. The continued leasing of the land which was subdivided and distributed to the beneficiaries works for the disadvantage of the applicants. The respondent has a legal duty to implement the grant and pass the respective shares to the beneficiaries. If the respondent has refused/failed to carry out this important duty for all that period, she cannot be trusted to do it any time soon. All the deceased's children are grown up and wish to take up their shares and utilize them as they wish. There is no doubt that the administrator is holding the applicants at ransom.

On the cost of implementing the grant, I believe the applicants will be ready and willing to meet the expenses since they have demonstrated the desire to have their shares bequeathed to them. The respondent also needs her share to be registered in her name so that she can have exclusive use of the land parcels. The issue of the 19 metres excess portion can be sorted out later by the parties.

I find this application merited and I allow it with no order as to costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF APRIL, 2015.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

- 1. All the applicants except Catherine Wairimu**
- 2. Respondent**