



**REPUBLIC OF KENYA**

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

**PROBATE AND ADMINISTRATION CASE NO. 816 OF 2002**

**IN THE ESTATE OF ANN GICHUKU RIMUNYO.....DECEASED**

**AND**

**NAZARIO KATHURI RIMUNYO.....ADMINISTRATOR**

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**RULING**

This is an application brought under certificate of urgency on chamber summons dated 4/2/15 seeking orders:

Firstly that it be certified urgent and be heard ex parte,

Secondly that the Officer Commanding Manyatta Police Station to provide security to the surveyor to effect the certificate of confirmation of Grant by this court dated 15/7/2014,

thirdly that Executive Officer of this court to execute all the transfer documents,

Fourth, that the Land Registrar Embu to effect this order.

The application is supported by affidavit of Daniel Njage Nyaga. In his affidavit the Applicant has stated that they filed succession in respect of the Estate of the deceased in 2002. A confirmed grant was issued on 10/7/14 in respect Land parcel Nos. GATURI/NEMBURE/1760 and GATURI/NEMBURE/4759, which indicates the shares of land for each beneficiary.

The applicant has stated that when the surveyor visited the parcels of land to sub-divide it in terms of the confirmed grant, the surveyor was unable to do so, because the Respondents were hostile. As a result they denied the surveyor accessibility to the two parcels of land. It is this denial that provoked this application.

In response to the application the 1<sup>st</sup> Respondent has opposed the application through a replying affidavit dated 9/3/15. According to him the applicant's affidavit is a forgery. The reasons being that he did not attend the Land Control Board that gave consent and that he did not sign the land board documents.

Furthermore, he states that his identity card and photographs were not attached to the application. He states that Kellen Wambogo Rimunya is not a beneficiary of GATURI/NEMBURE/4760 and should not consent on his behalf. He also states that he reported the forgery to Manyatta Police Station, wherein it is registered as OB No. 115/25/2/2015.

The Respondent had in a summon stated that there was a land sale between him and the 2<sup>nd</sup> Respondent which he states was not completed, because the applicant did not fully pay the agreed purchase price. He also added that the contract is not executable because the Respondents treated the whole contract as repudiated and that it is not time barred since it is over 10 years ago.

Finally, the Respondent has denied being hostile and preventing the surveyor from sub-dividing the land. He also says that the applicant has breached the terms of the contract and sub-division cannot take place.

In his further affidavit the applicant has denied forging the consent of the land control board, because the same was signed on the Deputy Registrar by virtue of a court order of 20/22/2014. This was done after the hearing of an application that was determined in the presence of all the parties including the Respondents. He has stated further that Kellan Wamboigo Rimyungo is a beneficiary and co-administrator of the estate.

In his further replying affidavit the 1<sup>st</sup> Respondent has repeated that the applicant forged the consent of the land control board. He also has stated that Kellen Wambogo as a co-administrator should have consulted him before signing the application for consent.

Furthermore, 1<sup>st</sup> Respondent has stated that the court did not explain to him the nature of the application dated 20/2/2014 as he is an illiterate and unrepresented amongst other matters.

### **Evaluation and findings:**

I have evaluated the affidavit evidence of the parties and the .... submissions of both counsel.

It is clear that the application before the court is to execute this court's order of the certificate of confirmation of Grant issued on 15/7/2014.

I find from the affidavit evidence that there is no order stating the execution of the order issued pursuant to the certificate of confirmation of Grant .

The equivalent of a judgment in an ordinary civil suit.

However, the 1<sup>st</sup> Respondent has opposed this application for execution on the ground that the 2<sup>nd</sup> Respondent forged the consent of the Land Control Board and that the land purchase agreement with the applicant had been terminated and/or was time barred.

The answer to the opposition of the 1<sup>st</sup> Respondent is that the court directed the Deputy Registrar to sign all relevant documents to effect transfer of the various portions to the beneficiaries. As a result a rectified certificate of Confirmation of Grant was issued on 10/7/2014.

As a result of the rectified grant the co-administrator Wambugu Rimunya applied and obtained consent from Manyatta Land Control Board, which was granted on 29/8/2014.

In the circumstances there is no forgery of the consent of the consent of the Land Control Board.

Furthermore, none of the Respondents have protested against the confirmed grant and/or re-confirmed grant.

I believe the affidavit evidence of the applicant that the 1<sup>st</sup> Respondent was hostile to the surveyor and Land Registrar when they want the parcels of land in issue to surve and sub-divide.

I find that it is the duty of the police to keep law and order in society. In the circumstances I find that the applicant has made out a case for the grant of the orders prayed in hearing chamber summons dated

4/2/20156.

In the light of the foregoing the officer in charge of Manyatta Police Station is to provide the surveyor with security to effect the certificate of confirmation of Grant in terms of prayer (2) of the chamber summons.

Additionally, the Deputy Registrar directed to execute all the transfer documents and the land Registrar is also directed to give effect to the order in terms of prayers 3 and 4 of the chamber summons.

There will be no order as to costs as the parties are family members.

**J.M. BWONWONGA**

**JUDGE**

**24/11/15**

**ORDER:**

Ruling delivered in open court in the presence of the parties and Mr. Kahuthu holding brief for both counsel.

**J.M. BWONWONGA**

**JUDGE**

**24/11/15**