



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 181 OF 2010**

***In the matter of the Estate of CHUMA MINJI (Deceased)***

**MAINA CHUMA MINJI**

**EDITH NJERU KIMINGI**

**MARGARET KAGUYU MURIUKI**

**PETER MURIUKI CHUMA.....APPLICANTS**

**VERSUS**

**MWANGI CHUMA MINJI**

**HELLEN WANJIKU CHUMA.....RESPONDENTS/ADMINISTRATORS**

**R U L I N G**

This is a ruling on the application dated 13/6/2015 seeking that the court be pleased to authorize the Executive Officer to execute all necessary transfer documents in respect of parcel No. Mwerua/Kanyokora/371 in place of the respondent/administrators to enable the transfer to be effected as per the confirmation of grant dated 25/2/2013. The applicant also seeks that the Land Registrar Kirinyaga County be ordered to dispense with the production of any documents required to be produced or executed by the respondents and that the OCS Baricho police station be ordered to provide security on the day of the subdivision. The application is supported by the affidavit of Edith Njeri Kimingi.

In the supporting affidavit it is stated that the 2<sup>nd</sup> applicant has authority to swear the affidavit on behalf of the other applicants. A grant was issued on 24/10/2011 and confirmed on 25/2/2013. According to the said grant each of the beneficiaries got a share out of Mwerua/Kanyokora/371. The respondents who are the administrators have refused to execute the necessary transfer documents. The applicants argue that the court should authorize the Executive Officer to execute the relevant transfer documents. It is contended further that there is no possibility of the respondents herein availing copies of their personal identification numbers to the lands registry or any other personal documents relevant for registration purposes due to their unco-operative tendencies hence the prayer to dispense with such production.

In the replying affidavit the 1<sup>st</sup> respondent stated that during rectification of grant, the applicants changed the mode of distribution without his knowledge and altered what was agreed upon. The rectification was only intended to change the reference number of the land parcel No. Mwerua/ Mukure/371 to read Mwerua/Kanyokora/371 but not to change the mode of distribution. After rectification of certificate of grant, the 1<sup>st</sup> respondent was given 2 acres instead of 2.7 acres. The applicants proceeded to execute the

new certificate of confirmation without 1<sup>st</sup> respondent's knowledge and registered Forms 7 and 19 in land registration. The co-administrator Hellen Wanjiku Chuma proceeded with the case without the 1<sup>st</sup> respondent's his knowledge or consent. He came to learn about change of the distribution after he was served with this application. The applicants and co-administrator have never approached him to decide how the estate should be distributed. Maina Chuma Minji a beneficiary who had been given land by the deceased has a share in the grant contrary to the deceased will.

The 2<sup>nd</sup> respondent indicated that he was not opposing the application. Parties agreed that the court should rely on their affidavits.

According to the original confirmed grant dated 25/2/2013 Mwerua/Kanyokora/371 was to be shared as follows;

Mwangi Chuma Minji	-	2 acres
Maina Chuma Minji	-	0.5 acres
Edith N. Kimingi	-	0.5 acres
Margaret Kanguyi	-	0.5 acres
Peter Muriuki Chuma	-	1.5 acres
Hellen Wanjiku Chuma	-	1.7 acres

The 1<sup>st</sup> respondent claims that the grant was rectified without his consent. He did not attach any evidence to his replying affidavit to show that the grant was rectified. The court file does not contain any proceedings for rectification. In the absence of any such evidence, the 1<sup>st</sup> respondent has not demonstrated any sufficient reason as to why the orders sought should not be granted.

All the beneficiaries except the 1<sup>st</sup> respondent/administrator are in agreement that the grant ought to be executed in accordance with the law. It was confirmed on the 25/2/2013 which is more than two years ago. The administrators/ respondents have a duty to ensure that the grant is executed for the benefit of all the beneficiaries. None of the respondents have explained the delay.

It is not in dispute that the 1<sup>st</sup> administrator has been unco-operative and has held the execution of the grant in abeyance. The contents of the confirmed grant in regard to the shares of the beneficiaries, has not changed. There is no evidence in the court record that the applicants have filed any application for rectification of grant regarding the shares of the beneficiaries or the change of the land reference number as alleged by the 1<sup>st</sup> respondent.

The issue of the share of Maina Chuma Minji should have been raised before the confirmation of the grant. The 1<sup>st</sup> respondent jointly with the co-administrator, applied for confirmation of the grant and bequeathed a portion of 0.5 acres to the said beneficiary and the grant was confirmed in those terms. It seems that the 1<sup>st</sup> respondent changed his mind after the grant was confirmed and took no steps to reverse the situation. He has shown no good reason why the grant should not be executed.

The applicants seek for an order that the Land Registrar dispenses with production of any documents that may be required. This court may only grant the prayer limited to original title that may be held by a party who is not willing to surrender them. However, the production of identification documents of the beneficiaries must be produced for the execution of the grant.

In regard to prayer 1 the Registrar High Court is the authorized person to assist the parties in the execution of the grant as opposed to the Executive Officer.

I find the application merited and it is hereby allowed in the following terms:-

1. *That the Deputy Registrar High Court executes all the necessary documents for execution of the grant confirmed on the 25/2/2013.*
2. *That the Land Registrar, Kirinyaga County is hereby ordered to dispense of the original title, if need be, in execution of the grant.*
3. *That the OCS Baricho provides security during the sub-division of LR. MWERUA/KANYOKORA/371.*

It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF DECEMBER, 2015.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Applicants**

**Respondents present**