



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**SUCCESSION CAUSE NO. 53 OF 2007**

**IN THE MATTER OF THE ESTATE OF – DECEASED**

**MIRIAM WANJIKU KINYUA .....**  
**.....APPLICANT**

**VERSUS**

**NGUNJIRI WAMBUGU.....1<sup>ST</sup>**  
**RESPONDENT**

**MUNENE WAMBUGU .....2<sup>ND</sup>**  
**RESPONDENT**

**FRANCIS KIBUE WAMBUGU.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

**Miriam Wanjiku Kinyua**, the Petitioner herein, took out the Summons dated 7<sup>th</sup> September 2010 in which she sought for an order authorizing the Deputy Registrar of this court to execute all the necessary documents to facilitate the execution of the certificate of the confirmation of grant. The petitioner invoked the provisions of *rule 73* of the Probate and Administration Rules. The petitioner swore an affidavit in support of the Summons. **Ngunjiri Wambugu, Munene Wambugu and Francis Kibue Wambugu**, being the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively filed the replying affidavit of Ngunjiri Wambugu to oppose the Summons.

The gist of the Petitioner’s application is that the grant was confirmed on 17<sup>th</sup> May 2010 and that the Respondents have declined to sign the necessary document, to cause the parcel of land known as **L.R. NO. MUHITO/MUNYU/550** to be subdivided in accordance with the terms of the confirmed grant. The Respondents on their part claimed that they are dissatisfied with this court’s order dismissing their objection and subsequently confirming the grant hence they have filed a notice of appeal. They admitted that they have indeed declined to sign the documents because they want the appeal to be heard and determined first. The Respondents are of the view that their appeal will be rendered nugatory if the orders are granted. They have even filed the application dated 4<sup>th</sup> June 2010 in which they sought for an order for stay of execution pending appeal.

I have considered the rival submissions. I have also taken into account the grounds set out on the face of the Summons plus the averments contained in the affidavits filed for and against the application. There is no dispute that the Protest by the Respondents was dismissed on 7<sup>th</sup> May 2010. On the same date the grant was confirmed. It is also not in dispute that the Respondents filed a notice of appeal on 17<sup>th</sup> May 2010. There is also evidence that the Respondents have applied to be supplied with proceedings and judgment. The record shows that the Respondents’ advocate was informed on 9<sup>th</sup> August

2010 that typed proceedings and judgment were ready for his collection. It would appear the Respondents have not deemed it fit to treat the matter with the urgency it deserves. There are two pending applications filed by the Respondents. The first one is the summons dated 4<sup>th</sup> June 2010 in which the Respondents are seeking for leave to enlarge time to apply for leave to appeal to the Court of Appeal against this court's decision of 7<sup>th</sup> May 2010. The second application is the Summons dated 14<sup>th</sup> February 2011 in which the Respondents are praying for an order for stay of execution pending the hearing and determination of the intended appeal. There is no evidence that those two applications were served upon the Petitioner's advocate. It is also obvious from the court records that the Respondents have never fixed those applications for hearing. It would appear they were woken up from their slumber by the Petitioner's application thus the Respondents were prompted to file and fix for hearing the second application when they realized that the Petitioner was keen to have the confirmed grant actualized. In my view, the Respondents conduct should not attract the sympathy of this court. The fact that a notice of appeal was filed did not in itself mean that an automatic order of stay was given. The Respondents were bound to move expeditiously to obtain the order. Typed proceedings and judgment were ready for collection as of 9<sup>th</sup> August 2010. The Respondents have not deemed it fit to prosecute their applications. The Petitioner should not be held back. I regret to state that in the circumstances of this case, the Court will not tolerate the indolent acts of the Respondents. I grant the Petitioner the orders she has sought in her summons dated 7<sup>th</sup> September 2010.

***Dated and delivered at Nyeri this 1<sup>st</sup> day of April 2011.***

**J. K. SERGON  
JUDGE**

In open court in the presence of Kimunya h/b Waruinge for Respondent N/A for Miss Keli for Respondent.

**J.K. SERGON  
JUDGE**