



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

SUCCESSION CAUSE NO. 281 OF 2009

**IN THE MATTER OF THE ESTATE OF IBUTU RINTURI (DECEASED)**

ROBERT KITHINJI .....PETITIONER

VERSUS

PETER KINOTI .....1<sup>ST</sup> APPLICANT  
HELLEN NCURUBI .....2<sup>ND</sup> APPLICANT  
FLORENCE MUKUBA .....3<sup>RD</sup> APPLICANT  
RUTH CHOMBA.....4<sup>TH</sup> APPLICANT

**RULING**

The applicants by their application dated 20/09/2011 are seeking the following orders.

1. ***That the Honourable Court be pleased to order that the Executive Officer of the Meru Law Courts do execute all the transfer documents in respect of L.R. No.NTIMA/IGOKI/937.***
2. ***That costs of this application be provided for.***

The application is based on the following grounds:

1. ***That this matter was finalized and the grant of letters of administration issued to Robert Kithinji was confirmed on 13<sup>th</sup> July, 2011.***
2. ***That since the petitioner has refused to attain the necessary consents and/or execute the requisite transfer documents to ensure a smooth distribution of the estate of the deceased in the shares set out in the confirmed grant.***
3. ***That unless the said documents are executed by the Executive Officer of Meru Law Courts the deceased's estate will remain undistributed.***
4. ***That it is only just and fair that this application is allowed so that the applicants may have their rightful shares of their father's estate.***

The application is also supported by affidavit of Peter Kinoti. It is opposed by the petitioner through his replying affidavit dated 19/09/2009.

I have considered the contents of the affidavits and submissions by the learned Counsel in support and in opposition of the application.

On perusal of the court file, it is clear that on 13<sup>th</sup> July, 2011 the petitioner was present and all beneficiaries. They had all signed the scheme on distribution. No one objected to the mode of distribution hence grant was confirmed by my Sister Lady Justice Lesiit.

On 22<sup>nd</sup> November, 2011 the parties by consent agreed NTIMA/IGOKI/937 be subdivided on the ground by Ms. Geoland Surveys on 23<sup>rd</sup> November, 2011 or as soon as is practicable in presence of parties. The surveyor to file his mutation with the court within 7days. This has been done. The mutation form is on record and the court had an opportunity of hearing counsel on the same and parties before consent was recorded on 22/11/2011.

This court notes this matter has been finalized and there is no pending application save implementation. That the petitioner has refused to execute the necessary transfer documents to ensure distribution of the estate is effected as per confirmed grant.

The petitioner's allegation that he has not declined to execute documents is not true and is introducing new matters contrary to the mode of distribution. That the surveyor in the mutation form has spared the petitioner's permanent house. Further, his change of mind to deprive his sisters of their portion on grounds that they are married is contrary to the Constitution. It is also contrary to the consent he signed for distribution.

The petitioner's allegation that his sisters want to get the portion the petitioner has developed his homestead as well as where his sons have put their homes is not true as per affidavits before the court.

I find there is no justification in delaying transfer of respective portions to the beneficiaries as per Geoland Surveys mutation form which was carried out with consent of all parties.

The application is merited and I would proceed to make the orders as follows:-

- a. ***That the Executive Officer of this court do execute all necessary transfer documents and/or any relevant documents in respect of L.R. No.NTIMA/IGOKI/937.***
- b. ***That petitioner to pay costs of this application.***

DATED AND DELIVERED AT MERU THIS 8<sup>TH</sup> DAY OF DECEMBER, 2011

**J. A. MAKAU**  
**JUDGE**

**Delivered in open court in presence of:**

1. Arithi for Applicant
2. Kiambi h/b for Petitioner

**J. A. MAKAU**  
**JUDGE**