



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**SUCCESSION CAUSE NO. 373 OF 2012**

**In the matter of the Estate of BENJAMIN KAUMBUTHU MUNYI Alias**

**BENJAMIN KOIMBUTHU Alias BENJAMIN KOIMBUTHU (Deceased)**

**PATRICK GICHOVI NYAGA GAITA.....APPLICANT**

**VERSUS**

**SILVANO MWANIKI BENJAMIN KAUMBUTHU.....1ST ADMINISTRATOR/RESPONDENT**

**PATRICK KINYUA BENJAMIN.....2ND ADMINISTRATOR/RESPONDENT**

**R U L I N G**

1. The applicant in his application dated 10/8/2016 seeks for several prayers which may be condensed to read as follows: -

(i) That the administrators/respondents be ordered to execute the grant confirmed on 29/5/2014 in order to give the applicant his share of 0.10 ha. out of Gaturi/Nembure/2354.

(ii) That the Land Registrar be directed to dispense with the original title deed.

(iii) That the Officer Commanding Station (OCS) Manyatta police station be ordered to provide security during sub-division of the land.

2. The grounds supporting the application are that the applicant is a beneficiary in the grant for a portion of 0.10 ha. out of LR. Gaturi/Nembure/2354. The respondents have refused to execute the grant despite request by the applicant and are holding the original title of the land which will be needed by the Land Registrar in execution of the grant. The applicant therefore prays that the Deputy Registrar executes all the necessary documents on behalf of the respondents and that the requirement to produce the original title be dispensed with.

3. The respondents opposed the application in their joint replying affidavit. It is deponed that the applicant is yet to pay balance of the purchase price of Kshs.100,000/=. It was stated that the parties mutually agreed that the applicant clears the balance after the confirmation of grant where he was included as a beneficiary. The respondents prayer is that the applicant be ordered to pay the balance of the purchase price to the respondents.

4. The grant in this case was confirmed on 29/5/2014 and it includes the nine beneficiaries including the parties in this case. It is further argued that there was no objection from any of the beneficiaries against the confirmation and that the summon was supported by the joint affidavit of the respondents. The mode of distribution was acceptable to all the parties and none of the beneficiaries has come to court to seek for annulment or revocation of the grant.

5. The respondents being administrators have a duty to execute the grant so that all the beneficiaries be given their shares. It is an established position that the administrators have a legal duty that must be performed. The failure to perform this duty may lead to revocation or annulment of grant on application by any of the beneficiaries. The respondents do not seem to be aware of their responsibilities and have delayed execution of the grant for over two (2) years.

6. Without an application to revoke or annul the grant, the respondents are acting in vain in refusing to perform their role as administrators. When the grant was being confirmed the issue of the applicant being a purchaser and having not completed to pay the purchase price was never brought to the attention of the court. The court cannot be dragged in the private agreement of the parties by being asked to order the applicant to clear the balance of the purchase price, if any. The respondents should execute the grant and thereafter seek the available legal remedies to address their grievances.

7. The 2<sup>nd</sup> respondent seemed to have changed his mind as he indicated during the hearing of the application. He told the court that he supported the application and had departed from his averments in the supporting affidavit. This had no effect on the application because the 2<sup>nd</sup> respondent had no capacity to solely withdraw the joint affidavit which was evidence on oath.

8. I come to the conclusion that the grant requires to be executed not only for the benefit of the applicant but for all the beneficiaries. Further delay in the execution does not serve the interests of justice and is likely to prejudice the beneficiaries.

9. I find this application merited and I allow it in the following terms:-

*(i) That the Deputy Registrar is hereby authorized to execute all the necessary documents for execution of the grant on behalf of the administrators.*

*(ii) That the production of the original title be dispensed with.*

*(iii) That the OCS Manyatta provides security during sub-division of the land Gaturi/Nembure/2354.*

*(iv) That each party meets its own costs.*

10. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF NOVEMBER, 2016.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**The Applicant represented by Ms. Muthoni**

**Both Respondents**