



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 292 OF 2012

IN THE MATTER OF THE ESTATE OF KEGA NDWIGA (DECEASED)

JOHN NJAGI KEGA.....APPLICANT

VERSUS

NICASIO GITHINJI KEGA.....APPLICANT

RICHARD WANDETO KEGA.....APPLICANT

JOEL MIANO KEGA.....APPLICANT

RULING

[1] By an application dated 22nd January 2025 the applicant sought an order to compel the Respondents to sign transmission documents for purposes of giving effect to the confirmed Grant in this succession proceedings, principally as follows:

“2. That the honourable court be pleased to issue an order against the respondents to sign the relevant documents to ensure the sub-division and placing of beacons in respect to title number Inoi/Mbeti/409 and/or this honourable court do order the executive officer of this court to sign partition forms and/or the completion documents in respect to land parcel number Inoi/Mbeti/409 on behalf of the respondents .

3. That the honourable court be pleased to issue summons to OCS Kerugoya to oversee the sub-division and placing of the beacons on title number Inoi/Mbeti/409.”

[2] By their replying affidavit of the respondents sought to have the implementation of the Confirmed Grant reviewed so that they are allowed to pay off the applicants on the argument that they had occupied the parcel of land in a manner not permit the division of the parcel of land equally between the applicants and the respondents without adversely affecting the present settlement of the respondents on the ground, as follows:

“1. That I am the Respondent and with authority of the 1st and 2nd Respondents herein competent to swear this affidavit.

2. *That I have read and understood the application under certificate of urgency dated the 22nd January 2025 and do wish to respond as hereunder.*

3. *That the application is anchored on the wrong provisions of the law and such prayers cannot be granted as such, in the present application.*

4. *That we were not satisfied with the judgment of the court and we have since filed a notice of appeal as per the courts directions. Annexed and marked as RWK/t is a copy of the Notice of appeal duly filed and served upon the Applicants advocate)*

5. *That we have already requested for the typed proceedings and waiting for the same to be completed so as to accordingly move the Court of Appeal. (Annexed and marked as RWK2 is a copy of the letter dated the 12th November 2024)*

6. *That we have had negotiations with the Applicant and which are yet to be concluded due to some few misunderstandings. However, we still have the good will to proceed and pursue an out of court settlement.*

7. *The orders sought by the Applicant will just frustrate any efforts that have ever been made to resolve this matter. We have made several development and subdivisions lead to massive loss and destruction of property. It is the very reason we had initiated negotiations so as to compensate the Applicant in monetary form. After all, he has another land in Mwea measuring ten (10) acres.*

8. *That it would only be prudent that a solution within the family be embraced for peace to prevail.”*

[3] After several appearances before the Court the respondents offered to pay Ksh.2,000,000/= for the applicants’ share of the suit property as well as refund money some 70,000/- spent in the succession and the survey process to be agreed. The date of the payment was given as 18/8/2025.

[4] The respondents did not honour their undertaking and in frustration citing protracted delays in the settlement of the succession dispute the applicants now seek the Court’s assistance in the final distribution of the estate in accordance with the Confirmed grant.

[5] The Court has confirmed that the distribution of the estate was order by the Court in accordance with Certificate of Confirmed grant of 18/12/2023 distributing the two estate asset to the respective beneficiaries. The Court has not been served with any orders of a higher court staying execution of the Court distribution or of any judgment

on appeal. To the best of the court's knowledge, here is no pending appeal before the Court of Appeal.

- [6] Close to two years later the confirmed Grant has not been implemented on account of unfulfilled promises of the respondents to buy off the applicants from their share. While there was an initial agreement at a settlement with monies scheduled to change hands on 18/8/2025, the respondents did not keep their bargain, and the Court has no basis to continue to hold the specific implementation of the confirmed grant of the Court.
- [7] The applicant sought an order to compel the respondents to sign the transfer document to implement the transmission and in default an order for the Chief Executive Officer to sign the transmission documents.
- [8] On account of the obvious disagreement between the parties to order the respondents to sign the transfer documents will only result in further delays as they dither to sign the transfers to defeat the transmission which they have sought to block over the time.
- [9] The court order on distribution must be specifically performed and in the absence of the settlement agreement to the contrary, the court must now issue an order for the executive officer to sign the necessary transfer documents in lieu of voluntary execution by the respondent, which the court has no basis to expect.
- [10] As ancillary relief, the court shall order the officer commanding the police station within the jurisdiction of which the suit property is situated for purposes of maintaining peace and security to provide security for the exercise to effect the necessary subdivision.

ORDERS

- [11] Accordingly, for the reasons set out above, the Court finds the applicant's application dated has merit and it is allowed in terms that the Executive officer of the Court to execute the transfer documents to facilitate the transmission of the estate asset to the beneficiaries in accordance with certificate of the Confirmed Grant dated 18/12/2023.
- [12] The Court finds that the respondent has unreasonably delayed the fair determination of this suit after the confirmation of Grant and therefore orders that the costs of the applicant are awarded to the applicant against the respondents.

Order accordingly.

DATED AND DELIVERED THIS 11TH DAY OF DECEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Applicant in person.

Mr. Mugo for the Respondents.