



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Gachoki Muchairu (Deceased) (Succession Cause
280 of 2012) [2023] KEHC 20893 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20893 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 280 OF 2012**

LW GITARI, J

JULY 27, 2023

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

IN THE MATTER OF

LOYFORD MUTURI KARIBA 1ST PETITIONER

GODFREY MUCHIRA KARIBA 2ND PETITIONER

RULING

1. The matter pending before me is a summons dated May 22, 2023 under Section 71 of the [Law of Succession Act](#) and Rule 40 (1) of the Probate and Administration Rules.
2. The summons seeks rectification of grant issued to Lyford Muturi Kariba and Charles Renji Muchira on November 13, 2021. It further seeks an order for the removal of caution placed on land parcel No LR Abogeta/upper Kithangari/672 which was lodged by Charles Renji Muchira.
3. The summons is supported by the affidavit of Loyford Muturi Kariba and is based on the following grounds-;
 - 1) The grant was confirmed on November 13, 2017.
 - 2) Muthoni Gacoki passed away and her share needs to be distributed.
 - 3) The caution on land parcel No Abogeta/U-Kithangari/672 needs to be lifted to enable the sharing of the estate to be carried out.
4. I have considered the application. First and foremost I note that this application is not opposed. On July 24, 2023 when the matter came up for the application majority of the beneficiaries were in court and confirmed that they did not oppose the application. Those who did not turn up in court were



aware of the matter and furthermore they had signed a consent dated May 22, 2023 to the rectification of the annexed confirmed grant.

5. Secondly, the applicant has annexed a death certificate, marked MK 3 which proves that Muthoni Gacoki died on November 12, 2016. The certificate of confirmed grant shows that she had been awarded a share of the estate, that is land Parcel No Abogeta/Upper Kithagari/672. The prayer that her share goes to Loyford Muthuri Kariba is not opposed.
6. I also note that the cautioner of the suit land, Charles Renji Muchira had signed a consent to the rectification of grant. He did not appear in court. He has also not filed any document to oppose the application. In the circumstances, I find that the application is not opposed. The rules gives the court discretion to make orders as may be necessary for the ends of justice.
7. Rule 73 of the *Probate and Administration rules* provides-;

' Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary to the ends of justice or to prevent abuse of the process of the court.'
8. In this matter it is necessary that the share of the deceased beneficiary be distributed so that the grant can take effect. Furthermore the estate cannot be distributed when the land has an encumbrance. Section 73 of the *land Registration Act* (Cap 300 Laws of Kenya) provides that-;

' A caution may be withdrawn by a cautioner or removed by the order of the court or subject to sub-section (2) by an order of the registrar.'
9. The cautioner has not applied to remove the caution and on the other hand he signed the consent to the present application. It is necessary that the caution be removed in the interest of justice so that the grant may be effected. I find that the application has merits.
10. I order that-:
 1. The certificate of confirmation of grant shall be rectified to the effect that the share of Muthoni Gachoki shall go to Lyford Muturi Kariba.
 2. The caution lodged on land parcel No Abogeta/Upper-Kithangari by Charles Renji Muchira shall be lifted forthwith.

DATED, SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF JULY, 2023.

IN THE PRESENCE OF

Mr. Arithi for applicant

Applicant – present

Court Assistant V. Kiragu

HON. LADY JUSTICE L. GITARI

HIGH COURT - JUDGE

