



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 672 OF 2014
IN THE MATTER OF THE ESTATE OF BACHIA KANAIYA
ALIAS BACHIA S/O KANAITA (DECEASED)
WILLIAM GATHAGO BACHIA.....APPLICANT

RULING

Brief facts

1. This application dated 20th August 2021 is brought under **Rule 49, 63 and 73 of the Probate & Administration Rules, Order 45 Rule 1, 2 & 3 of the Civil Procedure Rules, Sections 3A, 63 (e) and Section 80 of the Civil Procedure Act** and seeks for orders of review of the confirmation of grant orders issued on 2nd July 2015 and all other subsequent orders dated 16th October 2018 and 19th February 2019. The applicant further seeks to amend and rectify the confirmed grant as per his attached affidavit.
2. The application was not opposed.

The Applicant's Case

3. The applicant states that he is an administrator of the estate and he is unable to execute the grant as it is because the beneficiaries are not satisfied with the mode of distribution. The beneficiaries occupy different portions of Land Parcel No. LR No. Muhito/Thiha/14 and the applicant wishes the grant to be reviewed in the following terms:-

a) Keziah Wangui Kamau	0.90 acres
b) Simon Gichuki Bachia	0.55 acres
c) Zacharia Ndegwa Bachia Kanaiya	0.40 acres
d) William Gathogo Bachia	0.45 acres
e) Lucy Waigumo Bachia	0.45 acres
f) Mary Nyambura Ndiragu	0.45 acres
g) Elaine Njeri Mukuru	0.95 acres
h) Winfred Wakarindi Kimondo	0.45 acres

4. The applicant further contends that at the time of the confirmation of the grant, he and the beneficiaries did not understand the implications of the term "to be shared equally". The beneficiaries therefore consent and are agreeable to the mode of distribution as discussed above.

Issue for determination

5. After careful analysis, we humbly submit that the only issue for determination is whether the grant issued on 2nd July 2015 should be reviewed.

The Law

6. **Order 45 of the Civil Procedure Rules** provides:-

(1) Any person considering himself aggrieved-

a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

7. The summons herein seeks to review the certificate of confirmation of grant dated 2nd July 2015 primarily on the mode of distribution. There is no dispute that the court confirmed the grant on 2nd July 2015 after the parties filed a duly executed consent on the agreed mode of distribution so that the estate was to be shared equally among all the beneficiaries and a certificate of confirmation was issued to that effect. The applicant now wants the mode of distribution reviewed and the certificate of the confirmed grant to be set aside. In place, he wants the estate to be shared as per paragraph 5 of his affidavit. He has annexed a consent to redistribute the estate which is similar to the proposed mode of distribution as per his affidavit.

8. I have perused the court record and note that the beneficiaries did agree on the mode of distribution before confirmation of the grant. They were not represented by counsel at the time although they were present in court during the confirmation proceedings. The applicant now contends that they did not understand the term 'to be shared equally' and they give that as their basis for sufficient cause to warrant the review of the court. Notably, the beneficiaries have annexed a consent as to their preferred mode of distribution. All the beneficiaries are in agreement to the mode of distribution and the summons herein is not opposed.

Conclusion

9. All the beneficiaries having filed a written consent and given reasons for seeking review of the orders made on 02/07/2015 distributing the estate, I find no reason to deny them the orders sought.

10. I am satisfied that the summons for review dated 20/08/2021 is merited and ought to be allowed.

11. The orders confirming the grant issued on 02/07/2015 are hereby reviewed in terms of prayer (2) of the said summons and paragraph 5 of the supporting affidavit.

12. An amended grant to issue in the foregoing terms.

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 24TH DAY OF FEBRUARY, 2022.

F. MUCHEMI

JUDGE

JUDGEMENT DELIVERED THROUGH VIDEOLINK THIS 24TH DAY OF FEBRUARY, 2022