



In re Estate of Stephen P Kaaria alias Stephen Patrick Kaaria (Deceased) (Succession Cause 195 of 2015) [2022] KEHC 10654 (KLR) (31 May 2022) (Ruling)

Neutral citation: [2022] KEHC 10654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 195 OF 2015
EM MURIITHI, J
MAY 31, 2022
IN THE MATTER OF THE ESTATE OF STEPHEN P.
KAARIA ALIAS STEPHEN PATRICK KAARIA (DECEASED)**

**IN THE MATTER OF
MARTHA KANANU KAARIA APPLICANT**

RULING

1. By an application through notice of motion dated 21/9/2021, the applicant seek review in terms that the court review “its ruling of August 24, 2021 and allow the applicant’s application dated January 25, 2021 in terms of prayer no 2.” The grounds of the application were set out in the motion as follows:
 - “ 1. That the Honourable court failed to consider that Kathiri M’murithi and Stephen P Kaaria (the Deceased) were joint owners of Parcel Number Nyakil Kithokal690.
 2. That the court failed to consider that Kathiri M’murithi is still alive and she is the mother to Peter Murithi.
 3. That the Honourable erred in failing to consider that it is Martha Kananu Kaaria (wife to the Deceased) who pursued the succession cause in respect of his husband’s share in Parcel Number Nyaki/Kithokal690, jointly owned by the Deceased and Kathiri M’murithi.
 4. That there was an error in bundling Peter Murithi together with his mother Kathiri M’murithi, who is still alive whereas succession was conducted in respect the Deceased’s estate.
 5. That the honourable court erred in not finding that Kathiri M’murithi’s share should remain intact, since the succession only involved the Deceased’s share.



6. That the grant cannot be implemented if Kathiri M'urithi remains bundled with her son
 7. That the applicant requests the Honourable court to humbly agree to review its judgment so as to ensure that ends of justice are met.
 8. The new Constitution in article 159(2)(D) gives this Honourable court leeway to stretch her tentacles a bit for the sake of justice.”
2. Upon hearing the applicant’s counsel on the application for review, the court has established that there was an error in the order for distribution of the Estate of Stephen P kaaria Alias Stephen Patrick Kaaria (Deceased), starting with the confirmed grant of May 27, 2019(Mabeya,J) which ordered that ¼ Acre of LR No Nyaki/Kithoka/690 be distributed to Peter Murithi Kathiri and his mother Kathiri M’Murithi and culminating in this court’s ruling and order of 24/8/2021 which directed that the confirmed grant be implemented in full.
 3. It would appear that the petitioner is the author of the error because she listed the said Peter Murithi Ringera as a son of the deceased in Form P&A 5, the affidavit in support of petition for letters of administration intestate dated March 31, 2021, as follows:
 - “ 4. The deceased died intestate and left the following surviving him/her:
 - a. Martha Kananu Kaaria Widow
 - b. Tony Mutethia Kaaria Son
 - c. Doris Gaceri Kaaria Daughter
 - d. Peter Murithi Ringera son”
 4. Indeed, the letter from the chief Runogone Location dated 13/3/2015 filed along with the Petition also named Peter Murithi Ringera as a son of the deceased in the estate of Stephen Patrick Kaaria.
 5. In addition, it was the petitioner’s own application dated 7th March 2019 for reinstatement of Grant following dismissal for want of prosecution and confirmation of the grant, supported by the applicant Martha Kananu Kaaria’s affidavit which at paragraph 9 thereof, granted by Mabeya, J on confirmation of the grant prayed as follows:

“That I pray that the grant be reinstated and it be remitted and it be confirmed in the following terms:-

 - a. Peter Murithi Kathiri
Kathiri M’Murithi, ¼ Acre jointly.
 - b. Martha Kanau Kaaria
Tony Mutethia kaaria
Dorris Gaceri Kaaria, Balance jointly.”
 6. However, it is now clarified, as set out in paragraph 3 of the supporting affidavit of the applicant sworn on 21/9/2021 that “the deceased and Kathiri M’Murithi were joint owners of a parcel of land number Nyaki/Kithoka/690 (sic)” and that this Succession Cause is with respect to the share of the deceased Stephen Kaaria in the said parcel of land, and that Kathiri M’Murithi and Peter Murithi have no interest in the deceased’s share. The Court will, therefore, accept as urged in paragraph 7 of the Supporting



Affidavit “it is untenable in law to bundle Kathiri’s share with her son whereas she is still alive” (sic), never mind that it is the Petitioner who moved the court for the order in the Confirmed Grant.

7. Consequently, the court finds merit in the application for review dated 21/9/2021 for review of its ruling of 24/8/2021. There shall, therefore, be an order issued in terms of prayer No. 2 of the application of 25/1/2021 to the effect that “the confirmed grant herein dated 27/5/2019 is amended in terms of paragraph 7 of the supporting affidavit” therein.

Orders

8. Accordingly, for the reasons set out above, the court issues a rectified certificate of confirmed grant indicating amendment of the grant by removing the name of Peter Murithi from the confirmed grant and retaining Kathiri M’Murithi for ¼ Acre share of LR No Nyaki/Kithoka/690.

Order accordingly.

DATED AND DELIVERED ON THIS 31ST DAY OF MAY, 2022.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S ELIJAH K. OGOTI & CO. ADVOCATES for the Petitioner/Applicant.

