



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 16 OF 1983**

**IN THE MATTER OF THE ESTATE OF GEORGE GICHUNJU GIKARIA (DECEASED)**

**BEATRICE WANJIRU GICHUNJU.....APPICANT/PETITIONER**

**RULING**

1. The application was brought under a Certificate of Urgency and is dated the **1/02/2021** and is premised under the provisions of **Rules 43(1)** of the Probate and Administration Rules; the applicant seeks the following orders;

(i) Spent;

(ii) The rectification of the Grant of Letters of Administration issued on **12/03/1984**; rectification of the Certificate of Confirmation issued on **20/07/1997**;

(iii) Costs of the application be provided for.

2. The applicant relied on the grounds on the face of the application and on the Supporting Affidavit made by the applicant dated the **4/02/2021**; hereunder is a summary of the applicants' case;

**APPLICANT'S CASE**

3. The applicant deposed that the Grant herein was issued to herself and Nderitu Gikaria (the co-administrator) on the **12/03/1984** and the Certificate of Confirmation was issued on the **20/07/1997**; that Nderitu Gikaria was registered as a trustee of the applicant's minor children; the co-administrator is now deceased having passed on the **6/12/2012**; a copy of the Death Certificate is annexed to the application and is marked '**B/135/1**';

4. That **L.R.No.11625** has been given a new title number after the old title was surrendered to the Lands Office, therefore, the Certificate of Confirmation of Grant which bears the old title number requires rectification to bear the new title number; a copy of the Certificate of Title is annexed and marked '**B/135/II**';

5. The applicant humbly prays that the Certificate of Confirmation of Grant should be rectified and the half (1/2) share of **L.R.No.219142** (formerly L.R.No.11625) should be distributed to herself namely **BEATRICE WANJIRU GICHUNJU –ABSOLUTELY**;

**ISSUES FOR DETERMINATION**

6. After reading the applicant's application and the supporting affidavit made by the applicant the only issue this court finds for determination is;

(i) Whether this is a suitable case for review and rectification of the Order issued on **20/07/1997**;

**ANALYSIS**

**Whether this is a suitable case for review and rectification of the Order issued on 20/07/1997;**

7. The applicant seeks for the rectification of the Grant issued jointly to herself and her co-administrator who is deceased; upon the demise of the co-administrator the Grant has become inoperative.

8. The law is such that upon the demise of one or more of the administrators to whom a Grant has been made the powers and duties shall vest in the survivors; the exception is where there is a trust and in this instance the applicant has alluded to a trust, therefore a sole surviving administrator cannot act alone and this court is required to appoint an additional person or more, to be joint administrators;

9. The applicant sought to be appointed as a sole administrator but upon perusal of the court record this court notes averments made by the co-administrator in an Affidavit dated 16/07/1997 which reads as follows;

*‘3. That one of the deceased’s properties was one half share in Land Parcel L.R.No11625 Nanyuki 408.5 acres or thereabouts.*

*4. That I am owner of half share of the subject property and as co-administrator have agreed with the other administrator to have a portion of the subject land measuring 120 acres or thereabouts sold to defray some debts owing to the Estate.’*

10. To buttress this averment this court makes reference to Entry No.24 on the Title document which reads as follows;

*‘Transfer to Nderitu Gikaria and Gichunju Gikaria as tenants in common in equal shares.’*

11. In the light of the above averments it is this courts considered view that each tenant has a distinct separate interest/share in the property which remains undivided and that the interest or share of a deceased tenant is not affected by his/her demise and that share devolves to the estate of that deceased co-owner;

12. The reasons under which the applicant seeks the changes is based on her averment that the said co-administrator was a trustee for her minor children, which averment is found to be a falsehood and a misrepresentation of the true facts; so as to safeguard the interests of the deceased in the subject property it would be prudent to grant time within which a legal representative of the estate of Nderitu Gikaria (deceased) may move the court to be enjoined in the proceedings and be appointed as the additional administrator;

13. The applicant also seeks for the rectification of the description of the property on Certificate of Confirmation of the Grant to read **L.R.No.21914/2** instead of **L.R.No.11625 TIMAU**;

14. The applicable law is found under the provisions of Rule 43(1) of the Probate and Administration Rules which allows for review of the orders provided that it does not affect the substance of the Grant;

15. This court is satisfied that the change or correction is as envisaged by the foregoing provision of the law and allows this change to the extent of the description alone; the prayer for change in the mode of distribution is disallowed and shall remain the same until the legal representative of the estate of Nderitu Gikaria is enjoined to the proceedings;

16. This court is satisfied that this a suitable case for partial rectification of the Order issued on 20/07/1997 but at this stage only limited to the change in the description of the property to read **LR No.21914/2** instead of **LR No.11625 TIMAU**;

#### **FINDINGS AND DETERMINATION**

17. In the light of the forgoing this court makes the following findings and determinations;

(i) The application is found to be partially meritorious;

(ii) The Grant issued on 12/03/1984 shall be revoked and a Fresh Grant to be issued in the joint names of **BEATRICE WANJIRU GICHUNJU** and the legal representative of the estate of **NDERITU GIKARIA** (Deceased);

(iii) The description of the property on the Certificate of Confirmation of Grant dated the 20/07/1997 is hereby rectified to read **L.R.No.219142** instead of **L.R.No.11625 TIMAU**;

(iv) The mode of distribution shall be reviewed to read **BEATRICE WANJIRU GICHUNJU** and to include the name of the legal representative of the estate of **NDERITU GIKARIA** (Deceased);

(v) Parties at liberty to apply.

(vi) There shall be no order as to costs.

It is so Ordered.

**Dated, Signed and Delivered Electronically at Nyeri this 27<sup>th</sup> day of May, 2021.**

**HON.A. MSHILA**

**JUDGE**