



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 595 OF 2014

IN THE MATTER OF THE ESTATE OF SAMUEL NDIRITU MWANGI alias NDERITU MWANGI (DECEASED)

RULING

1. By a Chamber Summons dated 27th January 2020 filed pursuant to Rules 49 and 73 of the Probate and Administration Rules, the applicants/petitioners sought orders as follows:-

(a) That the grant of letters of administration instestate issued on 1st July 2014 be reviewed and rectified as shown in the annexed copy attached marked 'JMN'.

(b) That the Certificate of Confirmation of Grant issued on 20th April 2015 be reviewed and amended as shown in the annexed copy attached marked 'JMN 2'.

2. The application is supported by an affidavit deponed by Joseph Mathenge Ndiritu and James Kingori Ndiritu as joint administrators of the estate. Briefly, a grant of letters of administration was issued to the two applicants jointly on 1st July 2014. The same was confirmed on 20th April 2015.

3. Upon confirmation of the grant, one of the assets referred to as Nyahururu Farmers Society -304 was given to a beneficiary by the name of Margaret Wanjiru Njeri absolutely. That at the time of confirmation and distribution of the estate, they were not aware that the deceased had processed a title deed and that it had been allocated a parcel number.

4. That it was upon search of the affected property that they discovered the property has a new registration number Nya/Leshau Karagoini Block 01/304. They therefore urged the court to review the Certificate of Confirmation of Grant to substitute the property known as Nyahururu Farmers Society-304 with Nya/Leshau Karagoini to be in conformity with the obtaining land's office record.

5. Secondly, the applicants sought review and amendment of the name of the deceased to read Samuel Ndiritu Mwangi also known as Nderitu Mwangi. In support of these prayers, they attached a copy of the deceased's ID card and Death Certificate marked as 'JMM'.

6. I have considered the application herein and supporting affidavit together with supporting annexures. The application before me is seeking review and amendment of the grant. The provisions relied on are rule 73 of the P & A rules which bestows inherent powers upon the court in making such orders as may be necessary for the ends of justice to be made to prevent abuse of the process of the court. Section 49 also gives a party desiring to make an application where there is no provision to file summons.

7. However, Rule 63 of the P& A Rules does provide for the application of Order 45 of the Civil Procedure Rules which deals with review of applications. Although not quoted, the application squarely falls under Rule 63 of the P & A Rules in conjunction with Rule 73 and Section 74 of the Act to correct and or rectify an error in the name.

8. According to the search from Lands Registry, L.R. No. Nya/Leshau Karagoini Block 1/304 is registered in the deceased's name. The same is said to be a new number given in place of Nyahururu Farmers Society- 304. From the facts and circumstances of the case, I have no reason to doubt that Nyahururu Farmers Societ-304 is the same as Nya/Leshau Karagoini Block 1/304. Since there is no objection, and taking into consideration that Order 45 of the Civil Procedure Rules provides for review where there is discovery of new evidence or material facts that could not have been known or within the knowledge of the applicants after due diligence, the application is merited.

9. It is my conviction that discovery of change of title of the land in question amounts to discovery of new evidence thus supporting the prayer for review and amendment of the grant. For those reasons prayer one is allowed as prayed.

10. Regarding the second prayer on amendment and or correction of the deceased's name, there is enough evidence from the attached ID and Death Certificate that there are discrepancies in the names reflected. According to the ID the deceased is referred to as Nderitu Mwangi

while the Death Certificate refers to him as Samuel Ndiritu Mwangi.

11. From the above stated discrepancy, it is obvious that the grant cannot be executed without rectifying the same. I am therefore convinced that the second prayer is merited and the same is allowed as prayed pursuant to Section 74 of the Law of Succession Act and rule 43 of the Probate and Administration Act.

12. Accordingly, it is my holding that the applicants have proved their case to the required degree and therefore make orders as follows;

(a) That the grant issued on 20th April 2011 be and is hereby reviewed and amended so as to remove land known as Nyahururu Farmers Society – 304 from the Certificate of confirmation of Grant and the same be replaced with Nya/Leshau Karagoini Block 1/304 which shall then remain the property of Margaret Wanjiku Njeri as per the confirmed grant.

(b) That the grant of letters of administration herein and the confirmed grant thereof be rectified to reflect the deceased's name to read as, Samuel Ndiritu Mwangi also known as Nderitu Mwangi (Deceased) in place of Samuel Ndiritu Mwangi.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JUNE 2020.

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J. N. ONYIEGO

JUDGE