



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 383 OF 2003**

**In The Matter of the Estate of Mbaabu M'Abutu (Deceased)**

**MUSA MBAABU ALL.....PETITIONER/RESPONDENT**

**-VS-**

**SAINA KALIMI GEORGE.....APPLICANT**

**ANNE AMINA MWARI**

**MARIAM ZAINA ZEBERI**

**JUDITH KAGWIRA MOSES**

**NOOR MBAABU ALI**

**ADAMSON MUTHURI**

**MUKARIA MBAABU.....BENEFICIARIES/RESPONDENTS**

**AND**

**FAITH KARIMI MARETE.....1<sup>ST</sup> INTERESTED PARTY/APPLICANT**

**JAMES KUNYARI NJAGI.....2<sup>ND</sup> INTERESTED PARTY/APPLICANT**

**MARICELLA KINURIO.....3<sup>RD</sup> INTERESTED PARTY /APPLICANT**

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**RULING**

1. There are two applications before me.

2. The first application is summons for rectification and amendment of the grant dated 3/02/2020 and is expressed to be filed pursuant to **Sections 47 and 74 of the Law of Succession Act CAP 160 Laws of Kenya and Rules 43, 59 and 73 of The Probate and Administration Rules**. The applicants seek rectification and amendment of the certificate of grant issued and dated 06/12/2018 at Item No. 6 of its schedule to read LAND PARCEL NO. NYAKI/KITHOKAA/440 instead of LAND PARCEL NO. NYAKI/KITHOKA/123.

3. The grounds upon which the application is grounded upon are set out in its body and affidavit of Carlpeters Mbaabu, advocate of the High Court, and Interested Parties' sworn on 3/02/2020 and 6/07/2020 respectively. It is contended that the Interested Parties bought portions of land from LAND PARCEL NO. NYAKI/KITHOKAA/440 where they have extensively developed and not LAND PARCEL NO. NYAKI/KITHOKA/123. They stated that the error in the certificate is merely typographical and can easily be rectified in the interest of justice so that the grant can be implemented.

4. The second application is Summons dated 04/06/2020 brought pursuant to **Rule 73 of the Probate and Administration Rules of the Law of Succession Act CAP 160 Laws of Kenya** and all other enabling provisions of the law. The applicant seeks amongst other orders for an order to be issued to the Executive Officer or deputy Registrar requiring him to sign all relevant documents to effect the transfer of Land

Parcels Nos. KIIRU/NKANDO/542, NYAKI/IGOKI/1032, NYAKI/KITHOKA/440 and NYAKI/KITHOKA/123 in place of Musa Mbaabu Ali who is one of the administrators.

5. The grounds upon which the application is founded are set out in its body and the supporting affidavit of Saina Kalimi George sworn on 4/06/2020. It is argued that since the certificate of confirmation of grant was issued on 6/12/2018 one of the administrators Musa Mbaabi Ali has refused to sign the relevant transfer forms to effect transmission of the beneficiaries' shares as per the grant.

6. The issues of determination are *whether to rectify the certificate of confirmation of grant* and *whether to issue an order to the Executive Officer or deputy Registrar to sign all the relevant documents*.

### **Rectification of grant**

7. Section 74 of the Law of Succession Act provides that

**“Errors in names and descriptions, or in setting forth the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”**

8. The Interested Parties declared that they bought portions of land from LAND PARCEL NO. NYAKI/KITHOKAA/440 and not LAND PARCEL NO. NYAKI/KITHOKA/123 as was entered on the certificate of confirmation of grant. They produced their agreements to prove so. This fact was not disputed. Accordingly, based on the evidence produced, I find that the rectification of grant is merited. I allow it.

### **EO to sign transmission papers**

9. 1. I have lamented time without number that court administrators should not be turned into administrators of estates of deceased persons. It is awful that a duly appointed administrator of the estate of the deceased should refuse to sign transmission documents as required in law. Needless, to state that such conduct runs counter to the overall statutory duty of the administrators; to administer the estate of the deceased diligently and without undue delay. Therefore, where an administrator willfully fails or refuses to diligently carry out his statutory duties, the grant made to him should be revoked rather than authorize the DR or court administrator to sign transmission papers, yet, leaving the indolent administrator *in situ*. I propose courts to take this path in order to relieve estates of deceased persons of belligerent administrators, thereby, enhancing efficiency in administration of those estates by appointing compliant administrators. Nonetheless, notice of such precipitate action should be given to the administrator whose grant is subject of revocation. See section 76 of the Law of Succession Act. For emphasis, it makes real legal sense to revoke the grant made to recalcitrant administrators, rather than turn court administrators into administrators of sort of the estate of the deceased, yet, leaving such administrator in the office of personal representative of the deceased.

10. With the foregoing in mind, is there any reason of ordering the Executive Officer or deputy Registrar to sign transmission documents? In judicial proceedings, the decision turns on the facts of the case. See Andrew Goodman in his learned work, *How Judges Decide Cases: Reading, Writing and Analysing Judgments*, 2nd Indian Reprint (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009), in which he observes (p.44):

*“However rarefied and abstruse the legal argument before the [Court], it must be anchored on the facts of the case: while the judges will feel free to expound upon the most general principles in order to provide guidance for the future, the actual decision... will turn on the facts, even if the detail of the argument is quite remote from them”* [emphases supplied].

11. Such is a fundamental principle observed in the practice and application of law; and an approach that leads to a fair, dependable and plausible basis of judgment, as well as set a just and tenable reference-point for the future.

12. In this case, Saina Kalima George and Musa Mbaabu Ali are administrators of the estate of the deceased. The two are to administer the estate in accordance with the certificate of confirmation of grant issued on 6/12/2018. It seems the estate has not been distributed due to the refusal by Musa Mbaabu Ali to sign the relevant transfer forms.

13. The applicant has stated that she made an application dated 1/02/2019 inter alia praying for orders requiring the executive officer to sign all the relevant documents to effect transfer but the court ordered that the administrator do sign all transfer papers without specifying which administrator would sign the forms.

14. The foregoing orders of the court suffice as due notice to the belligerent administrator herein. Needless to state also that the certificate of confirmation of grant was issued way back on 6/12/2018 but its yet to be executed. This is quite a long period of time. In light of the orders of the court issued on 25/11/2019, it is safe to conclude that Musa has failed to sign the forms in issue, thus, failing to administer the estate diligently and without delay. He is in fact the impediment to the implementation of the grant herein. This is a perfect case for revocation of grant made to such administrator. In the circumstances of this case, I revoke the appointment of Musa Mbaabu as an administrator of the estate of the deceased. Saina Kalima George is now the sole administrator of the estate and shall so administer and sign all transmission as well as transfer documents in accordance with the certificate of grant herein. The grant and certificate of confirmation of grant shall be amended to reflect these orders.

### **Orders**

15. In the final analysis, I order the following:

- a. The certificate of confirmation of grant issued on 6/12/2018 shall be rectified and amended at Item No. 6 on page 3 of its schedule to read LAND PARCEL NO. NYAKI/KITHOKAA/440 instead of LAND PARCEL NO. NYAKI/KITHOKA/123.
- b. The grant and certificate of confirmation of grant issued on 6/12/2018 shall be rectified and amended by removing the name of Musa Mbaabu as the administrator of the estate of the deceased. Amended grant and certificate of confirmation of grant be issued accordingly.
- c. The administrator, Saina Kalima George shall sign all the transmission papers and complete the administration in three (3) months of service of this order.
- d. No order as to costs.

**Dated, signed and delivered at Narok through Teams Application this 23<sup>rd</sup> day of November, 2020**

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**F. GIKONYO**

**JUDGE**