



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 369 OF 2009**

**IN THE MATTER OF THE ESTATE OF ELIJAH KAGAI GATERE -(DECEASED)**

**AND**

**JAMES NDUNG’U NDIANGUI.....APPLICANT**

**VERSUS**

**BEATRICE MUTHONI MWANGI.....PETITIONER**

**RULING**

On 30<sup>th</sup> May 2015 a certificate of confirmation of grant with regard to the estate of Elijah Kaigai Gatere was issued to Beatrice Muthoni Mwangi in the following terms:-

**1. L.R NO.NYERI/ENDARASHA/418**

a) BEATRICE MUTHONI MWANGI -0.65 ACRES

b) ALICE WANGARI MUGO -0.65 ACRES

c) PERPETUA WAITHIGENI KAIGIA -0.65 ACRES

d) JANEFFER WACUKA NDUNGU -0.65 ACRES

e) PURITY NJAMBI MATU -0.65 ACRES

f) RAHAB MURINGI KAIGAI -0.65 ACRES

g) GERALD GATERE KAGAI -3 ACRES

**h) PURITY NJAMBI MATU -3 ACRES IN TRUST OF DERRICK KAIGAI NDIRANGU, JOAN WANGUI NDIRANGU AND HELLEN WANJIRU NDIRANGU**

Thereafter Janeffer Wacuka Ndung’u passed away on 21<sup>st</sup> June 2017.

By a letter dated 4<sup>th</sup> May 2018, the chief Endarasha Location wrote a letter to the Chief Magistrate requesting the substitution of Janeffer Wacuka Ndung’u with James Ndung’u Ndiangui who had passed away. He attached her certificate of death. the letter stated that the other members of the family had nominated him to replace his wife in the matter of the said estate.

On the strength of that letter her husband brought the Summons General dated 14<sup>th</sup> August 2018 under rules 49, 59 and 73 of the P&A rules. He sought orders: -

*1. That this court be pleased to order that the name of one JAMES NDUNG’U NDIANGUI be substituted with that of JANEFFER WACUKA NDUNG’U who passed away on 21<sup>st</sup> June 2017 and who was one of the beneficiaries of the estate of the deceased before his sad demise.*

*2. That this court be pleased to order that the orders of this court dated 13<sup>th</sup> May 2011 be reviewed and/or varied by ordering that*

*(0.65) acres out of L.R NO. NYERI/ENDARASHA/418 which was to be inherited by the said JANEFFER WACUKA NDUNG'U as contained in the certificate of confirmation of grant paragraph (e) issued by this court on the 30<sup>th</sup> May 2015 be now transferred to JAMES NDUNG'U NDIANGUI*

3. That the cost of this application be costs in the cause.

On 3rd December 2018 when application first came for hearing, the sisters to Jeneffer were present. They stated that they had no objection to their sister's portion going to her husband. I was curious. Did Jeneffer have children? They said yes. I requested for evidence. I gave directions that the chief to write a letter stating the list of beneficiaries to the estate of Jeneffer. The letter was filed on 29th January 2019. It was written by the Chief Kamakwa Location. He stated that she was survived by her husband James Ndungu Ndiangui and daughters.

1. Peris Wangui Ndung'u -38 years
2. Sarah Njeri Ndung'u -35 years
3. Nelson Jack Ndiangui Ndung'u- 32 years
4. Leah Nyakinyua Ndung'u -30 years

The issue here is whether the application as brought can be allowed.

Rule 49 provides for the procedure for applications not otherwise provided for, rule 59 provides for the form of proceedings. While rule 73 provide for the inherent powers of court to make orders for the ends of justice or to prevent abuse of the process of court.

In this case the applicant is actually filing a petition within another petition to inherit the property that his wife was entitled to inherit from the estate of her father, before she died. However, the only persons who could inherit from their grandfather in their mother's place are his daughters and not himself. This is because grandchildren can step into their parents' space and inherit what their parents would have inherited from their own parents.

The grant herein had been confirmed and what remained was the transmission of the estate. He produced all the documents requisite to file for grant of letters of administration, except the had not filed for the same and therefor did not have even the limited grant.

To be substituted as her personal representative the applicant needed to produce at least the limited grant of letters of administration.

The court has satisfied itself that the deceased had children, that the deceased's sisters have no objection to their sister's share of their father's estate going to their brother- in- law but that movement of the deceased's estate is not tenable through the application brought before me. The applicant would have to produce at least a limited grant of letters of administration for his wife's estate for him to come on board this cause.

As it is, the application is disallowed.

**Dated, delivered and signed at Nyeri this 14<sup>th</sup> Day of March 2019.**

**Mumbua T Matheka**

**Judge**

In the presence of:

Court Assistant: Juliet

Applicant

**Mumbua T Matheka**

**Judge**