



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 96 OF 1993

IN THE MATTER OF THE ESTATE OF FRANCIS MANYARA (DECEASED)

JULIA KANYONI MANYARA.....PETITIONER/APPLICANT

VERSUS

DAVID KIMATHI MANYARA.....RESPONDENT

RULING

1. This ruling is on the application dated 17/12/2018 brought pursuant to section 47 of the Law of Succession Act, Rules 73 of the Probate and Administration Act and all other enabling provisions of the law. The applicant seeks for the rectification/alteration of the grant confirmed on 27/11/2013 and for orders restraining David Kimathi Manyara, his agents or assignees from entering or interfering with ½ share of Land Parcel ABOTHUGUCHI/KATHERI/35.

2. The application was based on the grounds on the face of it and the supporting affidavit of Julie Kanyoni Manyara the administrator of the deceased estate. She deponed that the family including the respondent agreed that his half share of LR NO ABOTHUGUCHI/KATHERI/35 be exchanged with LR. No. 135 TIMAU SETTLEMENT SCHEME. She used the proceeds of Tea Earnings to purchase LR. No. 135 TIMAU SETTLEMENT SCHEME which measures 5 ½ acres and after buying the said land she transferred it wholly to the respondent who took up the land. The respondent has however made attempts to convince her to subdivide ABOTHUGUCHI/KATHERI/35 and give him a ½ share.

3. It is now the entire familys agreement that the other ½ share should go to the other beneficiaries who did not benefit from the first grant. That is; Mary Mwendwa Manyara, Susan Kanana, Joy Karoki, Lucy Kathure, Caroline Makena.

4. The application went unopposed as the respondents

5. I have carefully perused the application, affidavits, submissions and the record in its entirety and the issue to be determined is **whether to grant rectification/alteration of the grant confirmed on 27/11/2013?**

6. Section 47 of the Law of Succession Act Provides

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

7. Rule 73 of the Probate and Administration Rules provides as follows:

“Saving of inherent powers of court nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

8. Turning back to this case the applicant herein agreed with the respondent that she would give him LR. No. 135 TIMAU SETTLEMENT SCHEME and in turn he would surrender ABOTHUGUCHI/KATHERI/35 which would go to the other beneficiaries who did not benefit from the first grant. The applicant has since transferred LR. No. 135 TIMAU SETTLEMENT SCHEME to the respondent which is similar in size to the respondents ½ share of ABOTHUGUCHI/KATHERI/35. Additionally this court takes notice that this application was not opposed by the respondent who was notified of this application.

9. Consequently I find no reason to disallow the application therefore I order that the grant dated to be altered and reflect the following;

ABOTHUGUCHI/KATHERI/35

Tony Mutuma Manyara -½ share

Mary Mwenda Manyara

Susan Kanana

Joy Karoki ½ Jointly

Lucy Kathure

Caroline Makena

10. Each party shall bear their own costs.

HON A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 24TH OCTOBER 2019.

In the presence of:

CA:-

Petitioner/Applicant:-

Respondent:-

HON. A.ONG'INJO

JUDGE