



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 117 OF 2015

In the Matter of the Estate of Phylis Muthoni M'inoti (Deceased)

LUCIA KABURO FRANCIS.....PETITIONER

Versus

JOSEPHINE MPAKA M' INOTI.....1ST RESPONDENT

JEDIEL MWIRIGI M' INOTI.....2ND RESPONDENT

FRANK MWENDA GIDIEL.....APPLICANT

RULING

1. The applicant herein seeks this Court to review its Ruling dated 25/7/2017 and reinstate the original Certificate of confirmation of grant.
2. The application is premised on the ground that the matter was heard in the absence of his father **Jediel Mwirigi M' Inoti** as he was already dead at the time of the hearing. He claimed that his father had been allocated **NGUSISHI/ SETTLEMENT SCHEME/1189** approximately two acres slightly bigger than the rest because he is the one who had paid all the monies for the settlement fund otherwise the deceased would have lost the land to the settlement scheme.
3. To him, it was a big error to combine the four pieces of lands as the deceased had already shown each of the children their respective portions and each had taken possession of their portions.

Analysis and Determination

4. The deceased herein died intestate leaving behind four (beneficiaries i.e. Josephine Mbaka, Jediel Mwirigi (now deceased), Lucia Kaburo, and Faith Nkuene (now deceased). On 20th November 2016 this Court distributed the estate of the deceased as follows;

Name	Description of Property	Share of Heirs
Josephine Mpaka M' In oti	Ngusishi/ Settlement Scheme/1188	whole
Jediel Mwirigi M' Inoti	Ngusishi/ Settlement Scheme/1189	whole
Lucia Kaburo Francis	Ngusishi/ Settlement Scheme/1190	whole
Jediel Mwirigi M' Inoti	Ngusishi/ Settlement Scheme/1188	Share Equally
Lucia Kaburo Francis	Josephine Mapaka M' Inoti	

5. On 24th January 2017 the petitioner applied for this Court to compel the District Land Registrar to combine the land Parcel Numbers stated above for ease of distribution and the amalgamated title to be shared equally among the beneficiaries.
6. In the judgement dated 28th May 2018 the court noted that, although the application was titled "Summons for Rectification of Grant" it was essentially asking for revocation of the grant and redistribution of the estate. It became clear that **Faith Nkuene (now deceased)** had been left put in the distribution of the estate and that omission formed apt basis for revocation of the grant and re-distribution of the estate. I am aware that a court may on its own motion revoke a grant where cogent grounds as set out in section 76 of the Law of Succession Act

exists. But in this case it was applied for and was granted. Therefore, it was not a mistake as alleged by the Applicant, but a conscientious decision after consideration of material before the court.

7. In its determination this court also considered the evidence of **Josephine Mpaka** of the alleged meeting on 21st July 2016 that sought to distribute the estate of the deceased and held that the such had no legal force. The court also considered alleged imperfect gift *inter vivos* and held that there was no prove that the deceased made gift *inter vivos* to any of the persons claiming as such. The arguments being presented by the applicant were therefore determined. And, the court allowed consolidation of all the parcels for the purposes of being shared in accordance with the Orders made.

8. A rectified Certificate of Confirmation of Grant was issued on 2nd July 2018 distributing the estate as follows

Description of Property

Ngusishi/ Settlement Scheme/1188, 1189, 1190 & 1191 Combined)

- | | |
|---|-------------------------|
| Name | Share of Heirs |
| Josephine Mpaka M’ Inoti |1.18 Acres |
| Jediel Mwirigi M’ Inoti |1.18 Acres |
| Lucia Kaburo Francis |1.18 Acres |
| Lydia Nduru Mugambi..... | 1.18 acres |
| Silas Muthomi Mugambi | to share equally |
| Jackline Wanja Mugambi | (Faith Nkuene’s |
| Ngeta Lucy Mugambi Deceased - Share) | |

9. I have also considered the Chief’s letter dated 23/1/2019 annexed to the application and the averment that **Jediel Mwirigi M’ Inoti** was bequeathed a higher portion in Ngusishi Settlement Scheme/ 1189. This argument supports the distribution in the initial grant which has been revoked for it dispossessed some beneficiaries. The proposal does not therefore add any value to the application as it seeks to leave out the estate of **Faith Nkuene**; the ground which prompted the revocation of the grant.

10. The applicant request for review is predominantly anchored on an alleged *gift inter vivos* which this Court considered in its judgement and determined it. Repackaging of the issue as a basis for review will not hold sway. He is not however without remedy as any person aggrieved by the judgment in question has unfettered access to and right to seek remedy in the Court of appeal. I have noted parties in succession causes keep on coming back to this court even on matters they ought to address to the Court of Appeal.

11. Needless also to state that, the allegation that **Jediel Mwirigi (deceased)** paid for the parcels of land in question is not a potent ground for review of distribution sanctioned by the court. This argument is advanced in two senses; (1) to justify gift *inter vivos* to Jediel; and (2) to stake a proprietary claim in the estate property. The issue of gift *inter vivos* was determined. The other claim of proprietary interest cannot be entertained in this court but in ELC.

12. In sum, I hold that the applicant has not raised any valid reason for review of ruling dated 25/7/2017 and reinstate the original certificate of confirmation of grant. The application for review is therefore rejected. No orders as to costs.

Dated, signed and delivered at Meru this 26th day of November, 2019

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F. GIKONYO

JUDGE

IN PRESENCE OF

M/S Kiome for Kimathi for applicant

Petitioner in person present

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F. GIKONYO

JUDGE