



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 180 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE JOHN MAINA NYINGI - DECEASED

BETWEEN

DAVID THEURI MAINA.....APPLICANT

VERSES

EUNICE NYAWERA MAINA & ANOTHER.....RESPONDENTS

RULING

1. By his summons dated **28th January 2019**, the Applicant prayed for the rectification of the confirmed grant issued on the 4th of October, 2018 on the grounds that he was not consulted and that he did not append his signature to the proposed mode of distribution. When the application was being prosecuted he was left out despite being the only son to the deceased.
2. In his supporting affidavit sworn on the 28th day of January, 2019, he stated that he was a stranger to Nyikiwajo Investment Ltd which was given a portion of the said deceased estate and that one of the known purchasers was left out of the suit land namely **BUNGOMA /KIMININI/293**.
3. **EUNICE NYAWERA MAINA**, the Administrator as well as the respondent in her replying affidavit stated that the distribution made to the court and which was approved was equitable and that they all got equal shares of the estate. She said that the family had sat down and agreed on the mode of distribution despite the absence of the Applicant who has all along been uncooperative.
4. The parties then filed their written submissions which the court has perused extensively. This court shall be inclined to allow the application for the following reasons.
5. First of all looking at the documents in support of the application for the confirmation of grant and in particular the consent filed on the 4th September 2018, the Applicant though mentioned therein did not append his signature which is a critical requirement at that level of confirmation.
6. Secondly and more importantly, the record of this court of 4th October, 2018 clearly showed that the applicant did not attend court and thus his consent not secured. There was no explanation why he did not attend court on that particular date or why his signature was not obtained when signing the consent form.
7. In the premises, the best way is to have a level playing field. The grant issued on 4th October, 2018 with all attendant consequences is hereby set aside. The application for confirmation of grant dated 24th July, 2018 be set down for hearing a fresh by the registry and all parties are notified.
8. Each party shall bear their own costs.

Dated, signed and delivered at Kitale this 18th day of December, 2019.

H. K. CHEMITEI

JUDGE

18/12/19

In the presence of:-

Nakitare holding brief for Barongo for the Applicant

No appearance for Respondent

Court Assistant – Silvia

Ruling read in open court.