

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2058 OF 2014

IN THE MATTER OF THE ESTATE OF DAVID

CHRISTOPHER GITAU (DECEASED)

RULING

1. Through summons dated 8th November 2017 but filed on 4th December 2017, the applicant herein sought orders amending and or rectifying certificate of confirmation of grant dated 5th June 2017 so as to correct LR No. Nairobi 76/931/752 which was erroneously reflected as such in the said grant instead of LR 76/391.

2. The applicant further prayed that reference to the 2000 shares in Barclays Bank Ltd, 1200 shares with CMC Holdings Ltd (now Al-Futtaim), 2000 shares with Eveready East Africa Ltd., 555 shares with Kenya Commercial Bank Ltd, 1000 shares with Mumias Sugar Company Ltd, 800 shares with Olympia Capital Holdings Ltd and 1000 shares with Scangroup Ltd be rectified and amended so as to read as follows:

i. CDS Account No. 307/3765733-LI in the name of David Christopher Gitau.

ii. CDS Account No. 307/7031513-LI jointly held by Peter Chege Gitau and David Christopher Gitau.

3. Application which is filed under Section 74 of the Law of Succession Act and rule 43 of the Probate and Administration rules, is premised on grounds on the face of it and affidavit in support sworn on 8th November 2017 by Faith Njoki Ngigi.

4. I have carefully considered the application herein and affidavit in support. Upon perusal of the affidavit in support of the application for confirmation of grant dated 21st March 2017, it is apparent that the applicant had sought distribution of LR Nairobi Block 76/931/752 culminating to the confirmation of grant reflecting the said number. However, having gone through the title deed in respect of the said property, it is clear that the actual land reference is Nairobi/Block 76/391. Accordingly, it was an error based on misdescription of the property which is curable under Section 74 of the Law of Succession and Rule 43 of the Probate and Administration rules. Prayer (1)(a) is therefore allowed as prayed.

5. Regarding prayer (1) (b) in respect of wrong reference to shares in Barclays Bank, CMC holdings, Eveready, Kenya Commercial Bank, Mumias Sugar, Olimpia Capital Holdings Ltd and Scangroup, sufficient explanation was given hence the same shall henceforth be referred to as CDS Account Nos. B07/37/3765733-LI and B07/7031513-LI. However, the same shares shall remain being held by the applicant as per the original confirmed grant.

6. As to the inclusion of David Christopher Gitau and Peter Chege Gitau as beneficiaries of the aforesaid shares, the same is not applicable since they are not dependants of the estate and their inclusion as beneficiaries has not been explained hence the same is disallowed. Regarding costs, the same shall abide by the cause.

SIGNED, DATED AND DELIVERED AT NAIROBI ON THIS 14th DAY OF FEBRUARY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

Mr Chege H/brief for Mr. Gacheru....counsel for the applicant

Mr.Edwin.....Court Assistant