



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.815 OF 2012**

**IN THE MATTER OF THE ESTATE OF KARIITHI GAIITHO GACHAU (DECEASED)**

**ELIZABETH NGUNJU KARIITHI.....APPLICANT**

**VERSUS**

**PAUL WANJOHI KARIITHI.....1<sup>ST</sup> RESPONDENT**

**MWANGI KARIITHI GAIITHO .....2<sup>ND</sup> RESPONDENT**

**R U L I N G (2)**

On 27.2.2017, I delivered the ruling with respect to the summons for rectification of grant dated 9<sup>th</sup> March 2016 in which the administrator sought to change the mode of distribution of the estate from that which appeared in the certificate of confirmation of grant issued on 16<sup>th</sup> January 2014, which indicated that the property L.R NAROMORU/KIAMATHAGE/BLOCK 1/193 be shared equally among all the beneficiaries.

Having found that the newly proposed mode of distribution was not supported by the consents of all parties, I made the following orders:-

1. The petitioner to match each of the intended portions to each of the intended beneficiaries.
2. The petitioner to reveal the source of map annexed to the affidavit.
3. Each of the beneficiaries to personally appear in court on the 23<sup>rd</sup> March 2017 to confirm their consent to the new mode of distribution.

In reaction to those orders the petitioner filed a supplementary affidavit sworn on 23<sup>rd</sup> March 2017 to the effect that all she was doing was to share the estate according to the occupation on the ground by each beneficiary because the deceased had distributed the estate before he died, and she did not want to 'alter' the already established boundaries.

She annexed a consent dated 30<sup>th</sup> January 2014, and the sketch now bearing the stamp of **Kamau Murimi, Surveyor for Homeland Surveyors** showing the following distribution instead of 0.84 HA each: -

1. 0.73 HA – Mwangi Kareithi Gaitho
2. 0.49 HA – Elizabeth Ngunju Kareithi  
Lucy Gathoni Kareithi
3. 0.14 HA – Elizabeth Ngunju Kareithi  
Lucy Gathoni Kareithi
4. 0.70 HA - Paul Wanjohi Kareithi
5. 1.31 HA- James Maina Kareithi

This was followed by an opposing replying affidavit by Paul Wanjohi Kariithi and Mwangi Kariithi Gaitho stating that they had not been served with the Summons for Revocation of Grant of 9<sup>th</sup> March 2016, and only became aware of the proposed changes when the court directed the presence of all the beneficiaries on 23<sup>rd</sup> March 2017. They denied giving any consent to the new mode of distribution, which they rejected for being unfair and merely intended to benefit some of the beneficiaries.

The administrator now filed a further affidavit restating that the estate was being distributed in accordance with the wishes of the deceased.

I have carefully considered the contents of the affidavits.

The only issue for determination is whether the summons for rectification of the grant is merited.

My concerns about the multiple attempts to rectify the grant on varying grounds are expressed in the ruling of 27<sup>th</sup> February 2017.

The administrator had given the impression that the application to rectify was not opposed. However, it is clear that it is not unanimous, and is subject to challenge. She is introducing issues that cannot be settled through summons for rectification.

Section 74 of the Laws of Succession Act, as read with Rule 43 of the P&A Rules provides for rectification of errors in names and descriptions, time and place of deceased's death, purpose of a limited grant. The issue of the alleged wishes of the deceased cannot be dealt with by way of rectification of grant.

The administrator and some of the other beneficiaries are not in agreement as to the share of each of the beneficiaries. Of concern to this court is that the administrator's share, as the widow of the deceased is lumped together with one of the other beneficiaries and has not been given her own share or any provision made for her as is expected by law.

The administrator speaks of the wishes of the deceased. Some of the beneficiaries speak of an agreement to share the estate equally. It is obvious in the face of it that the administrator has been unable to distribute the estate as per the confirmed grant. All these efforts to rectify the grant, in my view are a window to underlying issues that were not addressed, and which cannot be addressed through her application for rectification of the grant.

The application is rejected. Should the administrator find that she cannot administer the estate, she is free to seek the revocation of the grant.

The application dated 9<sup>th</sup> March 2016 is rejected.

No orders as to costs

**Dated, delivered and signed at Nyeri this 12<sup>th</sup> day of April, 2018.**

**Mumbua T. Matheka**

**Judge**

In the presence of:-

Court Assistant- A. Atelu

Ms.Mwangi holding brief for Mr. Kiminda Advocate for respondents.

**Mumbua T. Matheka**

**Judge**