



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 261 OF 2012

IN THE MATTER OF THE ESTATE OF BONARERI NYAMIOBO

Alias CECILIA BONARERI MOTURI (DECEASED)

BETWEEN

PAUL MOKEBO NYAMIOBO.....1ST APPLICANT

WILKISTER KWAMBOKA AIMA.....2ND APPLICANT

AND

CHARLES MOTURI NYAMIOBO.....RESPONDENT

RULING

1. The estate subject of these proceedings is that of BONARERI NYAMIOBO alias CECILIA BONARERI MOTURI of Kiango who died on 18th February 1975. For purposes of this application, the grant of letters of administration intestate was confirmed on 15th November 2013 as the property known as MAJOGE/BOMBABA/7 ordered to be held by CHARLES MOTURI NYAMIOBO in trust of the deceased's three children CMN, WKA and PMN.

2. After confirmation of the grant, the matter stayed in abeyance until this year when P filed two applications. The first was the summons dated 8th February 2018 for rectification of grant and the second one a summons dated 24th April 2018 seeking cancellation of the title issued to Charles who was the administrator.

3. After hearing the parties it emerged that the only issue was how to demarcate the property as the parties were not agreed on how this should be done. In the meantime, Wilkister expressly renounced her claim to her inheritance and stated that the two brothers should share the property.

4. Having considered the contentions of the parties and with a view to resolving the matter, I now order as follows:-

(1) The grant issued to Charles Moturi Nyamiobo and confirmed on 15th November 2013 is hereby revoked.

(2) A fresh grant shall now issue to CMN and PMN.

(3) The grant is hereby confirmed on terms that both CMN and PMN shall share MAJOGE/BOMBABA/7 equally.

(4) For the avoidance of doubt, the title issued to Charles Moturi Nyamiobo is hereby cancelled and shall be delivered to the County Land Registrar within the next fourteen (14) days.

(5) The County Land Registrar and County Surveyor (or their appointed subordinates) shall proceed to the said property; MAJOGE/BOMBABA/7 and demarcate the same in accordance with the grant taking into account the land occupied by each beneficiary.

(6) Either party be at liberty to apply.

(7) The costs of the survey and sub-division shall be borne equally by the beneficiaries.

[Read and signed this 13th day of June 2018].

D.S MAJANJA

JUDGE