



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**SUCCESSION CAUSES NO. 1053 OF 2002**

**In the matter of the Estate of CHARLES NJERU MURUAETU (Deceased)**

**BERNARD MURATHI CHARLES.....1ST APPLICANT**

**LUCY GATURI NJERU.....2ND APPLICANT**

**V E R S U S**

**SCHOLASTICA GICHUKU NJAGI.....OBJECTOR**

**AND**

**BETH KARIMI NYAGA.....INTERESTED PARTY/RESPONDENT**

**R U L I N G**

1. This is a ruling on an application dated 16/08/2016 seeking for orders that the grant confirmed on 18/01/2005 be reviewed and/varied. Further that the said grant be amended in terms of the attached schedule.
2. The petitioners/applicants in their joint affidavit depose that one of the beneficiaries David Kivuti Charles passed away before the estate was distributed. The death certificate shows that David Kivuti Charles died on 1/03/2015. The family members are said to have agreed on how to distribute the shares of the deceased beneficiary in the grant. A consent signed by the applicants is annexed to the application.
3. The application was opposed by one Scholastica Gicuku Njagi beneficiary/objector deposes that her father Heshbon Njagi Tukiko Nguu had purchased L.R. No. Nthawa/Riandu/593 measuring 12.5 acres for valuable consideration from applicant's father Charles Njeru Muratetu whose estate is in issue herein. During confirmation, her father was only awarded 3.5 acres out of the fore said parcel which he opted to take and avoid a prolonged dispute.
4. It is further deposed that the applicants declined to execute the necessary transmission documents in favour of the father of the beneficiary. Before he died Heshbon Njagi Tukiko had filed an application seeking for orders that the Deputy Registrar be authorized to execute the transmission documents which he did not live to prosecute. Heshbon had occupied and developed the land since the 1980s. The gist of the application is that it is intended to take away the 3.5 acres given to Heshbon.
5. One Beth Karimi Nyaga the interested party/respondent opposed the application on grounds that the confirmed grant cannot be reviewed or varied since this is not a civil matter. Section 74 of the Law of Succession Act under which the application is based does not provide for review.
6. The interested party deposes that the deceased Charles Njeru Muruatetu was her father in-law. The deceased's son the late David Kivuti Charles was her husband. She contends that it would be wrong for the beneficiaries to decide on how the shares of the late Kivuti should be distributed, yet no administrator of Kivuti's estate has been appointed by the court. The interested party further states that she has already moved to court to defend her interest in Succession Cause No. 59 of 2016.
7. The issues arising from this application are:-

(a) *Whether the applicants have the legal capacity to bring the application on behalf of the deceased Charles Kivuti's family.*

(b) *Whether the application complies with the applicable law.*

8. The relevant law is Section 74 and 75 of the Law of Succession Act which empowers this court to give orders for amendment and rectification of a grant.

9. Section 74 provides:-

*Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.*

10. Section 75 provides:-

*If, after the grant of letters of administration with the will annexed or after confirmation thereof, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.*

11. The background facts is that the deceased died intestate in this case. The applicants were appointed administrators of the estate on 4/12/2002 and the grant confirmed 18/01/2005.

12. One of the beneficiaries Charles Kivuti passed on before the grant was implemented. It therefore became necessary for the administrators to return to court and seek orders to facilitate the execution of the grant.

13. However, the grant was opposed by one of the beneficiaries and an interested party who joined in this application in her capacity as the widow of David Kivuti the deceased beneficiary.

14. The interested party argues that the administrators had no capacity to bring this application because the family of the deceased beneficiary had not applied to be appointed personal representatives or administrators of his estate.

15. The applicants did not file any response to deny that the interested party is a widow of David Kivuti Charles. Of course this may require to be proved in the right forum if it is found to be in dispute. The interested party further states that she has joined in Succession Cause No. 59 of 2016. The deceased in the said succession case is David Kivuti Charles. This confirms that there is already an existing succession cause in respect of the deceased beneficiary which is yet to be determined.

16. It is not only his heirs who may decide how the redistribution would be done. It is correct to say that the applicant did not comply with the law since no limited grant was annexed to this application to show that personal representatives of the late David Divuti Charles had been appointed.

17. The other opponent Scholastica Gichuku Njagi claims 3.5 acres of the land L.R. Nthawa/Riandu/593 which she says her father bought from the deceased and he was bequeathed it in the grant. She claims that the administrators were not willing to sign the transmission forms to facilitate giving the title of the 3.5 acre portion to her father.

18. The father is now deceased and Scholastica has come in on behalf of and for the benefit of father's estate. She is apprehensive that this application to review/amend the grant is likely to defeat the interests of her deceased father's family in the event that the orders sought are granted.

19. I have perused the draft schedule of redistribution annexed to this application. It indicates that 5.00 acres out of L.R. Nthawa/Riandu/593 be inherited by one Caleb Gitari Kivuti, Gloria Mwendu David and Mary Wawira (minors) jointly and be held in trust for them by Beth Karimi Nyaga and 2 others.

20. In the original grant, a portion of Nthawa/Riandu/593 measuring 3.5 acres was to go to one Tukiko who is the father of Scholastica. The whole parcel measures 12.5 acres. The grant had already given 9.00 acres to other beneficiaries leaving only 3.5 acres to go to Tukiko the father of the objector. If 5.00 acres are given to people who were not in the original grant, this move will fundamentally alter the grant and disinherit some beneficiaries.

21. The grant shows that only one (1) acre was given to the deceased's beneficiary David Kivuti. The share of David cannot be expanded from one (1) acre to 5.00 acres and be given to people who are strangers in this cause without complying with the law.

22. I find that the beneficiary/objector has demonstrated that the original beneficiary and his survivors will be adversely affected should the court allow this application.

23. In regard to the law applicable, I find that Section 74 provides for amendment of the grant. Such amendment or rectification is purposed to correct "*errors, in names, descriptions or setting out time and in place of the deceased's death or the purpose in a limited grant*".

24. In the matter of the ***ESTATE OF MURIU KARAGO (Deceased) Nairobi High Court Succession Cause No. 2668 of 1997*** where the court in dismissing an application for rectification of grant held that the application could not be used to alter the mode of distribution of the estate.

25. I hold a similar view in this matter that an application for rectification of a grant only deals with obvious errors and cannot be used to fundamentally alter the mode of distribution.

26. All the foregoing considered, I find that this application has no merit and it is hereby dismissed.

27. There will be no orders as to costs.

28. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 30TH DAY OF JULY, 2018.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Mr. Siro for R. Njeru for Objector**

**Ms. Kiai for Kathungu for Petitioners**

**Mr. Okwaro for 2<sup>nd</sup> Interested Party**

**Mr. Guantai for Kagio for 1<sup>st</sup> Interested Party**