



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.473 OF 2011**

**IN THE MATTER OF THE ESTATE OF HARRISON MURIUKI (DECEASED)**

**LAWRENCE MAINA MURIUKI**

**HARRISON WACHIRA MURIUKI.....PETITIONERS/APPLICANTS**

**R U L I N G**

Before me is the Summons General dated 10<sup>th</sup> April 2018 brought under Section 74 of the Laws of Succession Act and Rules 43 and 73 of the P&A Rules.

It seeks orders as sought on the face of the application and is supported by the joint affidavit of Lawrence Maina Muriuki and Harrison Wachira Muriuki sworn on 10<sup>th</sup> April 2018.

The only issue for determination is whether the certificate of confirmation of grant issued on 18<sup>th</sup> November 2013 to both petitioners/applicants should be rectified to add in the schedule of assets the following properties: -

1. L.R NANYUKI/NAIBOR BLOCK 1/154
2. L.R NANYUKI/NAIBOR BLOCK 1/459
3. KIAMARIGA FARMERS CO.LTD PLOT NO.372
4. KIAMARIGA FARMERS CO.LTD PLOT NO.1542

and whether the same should be distributed in the following manner:

L.R NANYUKI/NAIBOR BLOCK 1/154 and L.R NANYUKI/NAIBOR BLOCK 1/459 to HaLawrence Maina Muriuki, and KIAMARIGA FARMERS CO.LTD PLOT NO.372 and KIAMARIGA FARMERS CO.LTD PLOT NO.1542 to Peris Muthoni Githu.

According to the applicants, at the time of confirmation of the grant they were not aware of the properties listed herein above so as to place them in the deceased's list d assets.

To prove the properties belonged to the deceased, they annexed "LHI" certificate of official search for the Nanyuki properties. For the Kiamariga properties they annexed a letter headed "Big plot No.372 Kiamariga Farming Co. Ltd clearance Certificate". The certificate is sealed on 22<sup>nd</sup> December 2016 and signed by the chairman, secretary and Director of the Company. It shows that the bearer was Samuel Githui Gacharia. This name has been cancelled and replaced with that of Harrison Muriuki- the deceased herein. The cancellation was signed and dated 15<sup>th</sup> July 2013. The certificate indicates that the irrigation plot No.1542 Laikipia has been cleared as the property of the bearer of the certificate and authorises the District Land Registrar to process and issue a title deed to the bearer.

When the matter came for hearing on 30<sup>th</sup> April 2018 the court raised concern with the said certificate pointing out to the parties the anomaly raised by the cancellation of the original name on the certificate replacing it with that of the deceased, and subsequent need to provide evidence that the cancellation was legitimate, and the plot belonged to the deceased. They also needed to establish whether it was one or two plots.

To address these concerns the applicants filed a further affidavit sworn on 2<sup>nd</sup> May 2018 by one Warui Kariri Gitimu who deponed that he was one of the Directors of Kiamariga Farming Company Ltd and the affidavit was in relation to "*mother plot 372/Irrigation Plot No.1542 Laikipia District*". That the plot was allocated to the deceased who was cleared as the sole owner on 22<sup>nd</sup> December 2016. His prayer was that the name on the plot be amended to read that of the deceased as the cancellation was signed by the chairman, secretary and Director of

the Company.

I have carefully considered the application, the supporting affidavit and the annexures. There are no issues regarding the Nanyuki properties as the certificates of official search are clear that the two properties belonged to the deceased.

However, regarding the Kiamariga property there are issues which the affidavit sworn by Warui Kariri Gitimu does not resolve: -

- i. The said Warui Kariri Gitimu has not provided any proof that he is/was a director of the said company.
- ii. The anomaly in the dates on the certificate: the deceased died on 4<sup>th</sup> April 2010 and the activities on the certificate are posthumous: the date of the cancellation and countersigning thereof of the name originally on the certificate, 15<sup>th</sup> July 2013, and the date of the certificate, 22<sup>nd</sup> December 2016.
- iii. The number of plots involved; he speaks of one plot No.1542, while the applicants speak of two plots No.372 and No.1542.

From the foregoing it is clear that the certificate and the affidavit sworn by Warui Kariri Gitimu do not amount to proof that said property belonged to the deceased. To allow the application without that proof would amount to conferring proprietary rights of ownership to the deceased, when none have been established in the first place.

On the proposed distribution of the properties, it was necessary for the applicants to provide the consents of all the beneficiaries. In this application it is only Peris Muthoni who appeared in court and gave her consent, and Lawrence Maina has expressed no interest in the property. Without the other consents the property can only be distributed equally among all the beneficiaries.

Hence the application dated 10<sup>th</sup> April 2018 is allowed in the following terms:

1. The grant certified on 18<sup>th</sup> November 2013 is rectified to include Title No.LR Nanyuki/Naibor Block 1/154 and LR Nanyuki/Naibor/149.
2. The two properties to be shared equally among the beneficiaries except Lawrence Maina Muriuki who has waived his share in the affidavit sworn on 10<sup>th</sup> April 2018.
3. The prayer regarding the Kiamariga plots is denied until parties can establish ownership by the deceased.
4. Costs in the cause.

**Dated, delivered and signed at Nyeri this 28th day of Sept 2018.**

**Mumbua T. Matheka**

**Judge**

**In the presence of:**

Albert CA

Lawrence Maina

Harrison Wachira

Peris Muthoni