



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

SUCCESSION CAUSE NO. 65 OF 2016

**IN THE MATTER OF THE ESTATE OF EMARILINESAMBA NJURU also known as EMARLINE SAMBA NJURU
(DECEASED)**

RULING

1. The Court has before it an Application for rectification of a Certificate of Confirmation of grant for the Estate of EMARLINE SAMBA NJULU aka EMARLINE SAMBA NJULU.

2. The Deceased sadly passed away on 12th June 2004. She was survived by her two children:

GLADYS MKAKESI MWAWUDU aged 68

And BEVINGTON MAMBEA NJULU aged 60

3. On 20th January 2016 GLADYS applied for Letters of Administration. It seems they were granted but there is no copy on the Court File. Sadly GLADYS passed away on 19th September 2016. Death Certificate Serial No 434895 is exhibited to the Supporting Affidavit of Matthew Mwawuda Fredrick who was the Husband of GLADYS before she passed away. On 5th May 2017 the Applicant herein Matthew Mwawuda filed an Application by Chamber Summons to be appointed as Administrator to the Estate of the Deceased Emarline. His grounds were that he was son-in-law to the Deceased and the grant to his wife was defective in substance. That is a surprising statement. He brings the Application under **Section 76 of the Law of Succession Act** and **Rule 44 of the Probate and Administration Rules**. **Section 76** relates to revocation and annulment of grant. The Applicant seems to suggest that as son-in-law he has better right to be an Administrator than the children of the Deceased. That is not the correct position.

3. The Application is Supported by the Affidavit of the said Matthew Mwamunda Fredrick who also calls himself John Matthew Mawunda. He states on Oath that the Beneficiaries and Dependants of Emarline Samba Njulu are Bevington Mambea Njulu, her son and Charles Allan Waseni Mwawunganya, a purchaser. Clearly the second part of that statement is untrue because a purchaser or intended purchaser cannot be a dependant or beneficiary. In fact naming this as such indicates towards an attempt to evade taxes, in particular stamp duty. Letters of Administration were issued by Hon. J. Kamau J on 21st December 2017.

4. On 3rd April 2018, the Applicant filed a Summons for Confirmation of Grant for the Letters of Administration issued on 21st December 2017 to be confirmed. The Application was supported by the Applicant Matthew Mwawuda Fredrick who states he was a dependant and son-in-law of the Deceased Emarline. He also deponed that a Charles Allan Waseni Mwawunganya was beneficially entitled to the entire Estate of the Deceased namely the land known as RONGE/NYIKA/509. Surprisingly the title deed was only issued in September 2017 and the owner's name is spelt differently.

5. The matter came before the Court for Hearing on 29th May 2018. On that date the Court heard from Beavington Mambea Njulu. He informed the Court that the property in question was a shamba that belonged to his mother and she had given it to his sister Gladys before Emarline died but it had never been registered in the name of the sister but Beavington accepted that she owned it. The Letters of Administration were confirmed on that basis with the property vesting in the Deceased's son-in-law.

6. Shortly thereafter the Applicant turned up again before the Court seeking another rectification, this time by the addition of a further property to again vest in the name of the Administrator for himself, or possibly for a purchaser, the intention is not clear. The second property is the land known as Taita/Taveta/Mwangea "B" Scheme IKANGA/251. The Applicant says he only became aware of that property by chance, surprisingly.

7. The effect of this piecemeal discovery and piecemeal application is that the complete picture is never placed before the Court. That raises the question of whether the Applicant is a fit and proper person to be Administrator of the Estate of the Deceased Emarline notwithstanding to agreement of her son Beavington.

8. In addition it is clear that the Applicant has made no effort to obtain Orders of Administration for the Estate of his own Wife Gladys. The

effect of that is that any future application to administer that Estate will cut across any orders made in this matter that would result in confusion and overlap which is to be avoided. When Gladys passed away she was in her 60's. The Court is not aware if she had any children who might also lay claim to her Estate. If they are disinherited from their rightful share by the conduct of the Application in these proceedings that would be unjust and inequitable.

9. For that reason the Court is satisfied that the Certificate of Confirmed Grant be rectified. It must be rectified to include all the property owned by the Deceased Emarline Njulu. In addition, the correct Administrator should be the son of the Deceased and the correct beneficiary if what the Court has been told is true, is the Estate of the Deceased's daughter Gladys.

10. The Applicant and the purchaser he has received must demonstrate their entitlement through the correct procedure, that is by obtaining Letters of Administration for the estate of Gladys.

11. The Applicant should also be conscious that his attempts at selling the property comprising the Estate of Emarline Njulu without a Confirmed Grant could amount to intermeddling which is punishable by imprisonment.

Disposition

12. This Court therefore orders that the Certificate of Confirmed Grant for the Estate of Emarline Samba Njulu be rectified as follows:

- 1) The Sole Administrator shall be the son Bearington Njulu
- 2) The schedule of Assets shall comprise only the Property for which the copy Title Deed is not suspect namely TITLE DEED No RONGE/NYIKA/309
- 3) The whole of that Property to vest in the Estate of GLADYS MKAKESI MWAWUDA

13. The Applicant shall Petition for Letters of Administration in that Estate so that it can be published by Gazettment before there is any disposal of the land. It is further ordered that there be a restriction placed against that title to prevent any disposal until such Petition has been filed and gazetted.

Order accordingly.

FARAH S. M. AMIN

JUDGE

SIGNED DATED AND DELIVERED ON THIS the 25th day of October 2018

In the presence of:-

Court assistant – Josephat Mavu

Applicant: in person

Beavington Njulu