



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 422 OF 2006

**IN THE MATTER OF THE ESTATE OF THE LATE KARIUKI MBAKA alias MUIGAI
MBAKA alias MBAKA KARIUKI – DECEASED**

**DOUGLAS NJUGUNA MUIGAI
CONSOLATA WAMBUI MUIGAI
AURELIA MUTHONI MUIGAI.....APPLICANTS**

V E R S U S

**JOHN BOSCO MAINA KARIUKI
JOHN NDERITU MUIGAI
JERIOTH WANGECI MUIGAI..... RESPONDENTS/BENEFICIARIES**

R U L I N G

On the 30/8/2016 Hon. Justice Mativo delivered a ruling in this matter identifying the properties of the deceased as; -

1. THEGENGE/UNJIRU/447
2. THEGENGE/NGOROI/75
3. EUSONYIRO/NGOROI/BLOCK V11/227.

The record shows that on 7th October 2016 the Deputy Registrar wrote a note to the Judge in the following terms;

“Judge,

1.Upon perusing the order for issue I have noticed that the piece of land registration EUASONYIRO/NGOROI/BLOCK VII/277 as per the draft order and the pleadings in the file is referred to as EUSONYIRO/NGOROI/BLOCK VII/227 in the judgment dated 30th August 2016.

2. Kindly issue us with directions on the way forward.”

In response ,18/10/16, he noted in the file that;

“the title no. as described in the pleadings differs with the title no. in the abstract of title in the court file. Before I rectify the ruling made on 30/8/16 I direct that the parties take a mention date to clarify the correct title number.”

I have perused the court file. I have found that the above directions were not complied with and no such mention date was fixed before the Judge. Instead the applicants have filed a Notice of Motion under Certificate of Urgency brought under s.100 of the Civil Procedure Act and rule 73 of the Probate and Administration rules seeking orders that; -

1) this court do amend the ruling delivered on 30/8/16 by correcting the land parcel no. in order (b) and (c) in page 4 to read **EUASONYIRO/SUGUROI/BLOCKV11/277** instead of **EUSONYIRO/NGOROI/BLOCK V11/227**.

2) That costs be provided for the grounds are that

- the land parcel is misspelt as EUSONYIRO/NGOROI/BLOCK V11/227
- the correct no. is EUASONYIRO/SUGUROI/BLOCK V111/277
- that the search certificate indicates the same as EUASONYIRO/SUGUROI/BLOCK V111/277.

The application is supported by the affidavit of Douglas Njuguna Mungai who depones that the parcel no. is misspelt in the ruling.

I have perused the ruling and the record. It is true there is in the file an abstract of title for EUASO NYIRO/SUGUROI/BLOCK V111/277 in the name of Kariuki Mbaka. This is the same as number appearing on the title deed annexed to the supporting affidavit.

Notably, a perusal of the file record and the pleadings shows that-

- The letter from the chief dated 14/8/06 speaks of EUSONYIRO/SUGUROI/BLOCK V11/277.
- Form P&A5 describes it the same way, and so does the Summons for Confirmation of Grant dated 16/12/08 and the rest of the pleadings.
- The judgment by Justice Sergon dated 23/9/2011 describes the property in the same way.
- The Summons for Rectification of grant dated 14/9/2015 described the property as EUSONYIRO/NGOROI BLOCK V11/277
- The certificate of confirmation of grant dated 24/9/11 described the property as EUSONYIRO/NGOROI/BLOCK V11/277

The parcel name and number given differs from the one in the ruling and the one in the pleadings. Nowhere in the pleadings has the parcel ever been described as **EUASO NYIRO/SUGUROI/BLOCK V111/277**.

Hence, it is not just a simple matter of misspelling in Hon. Justice Mativo’s ruling. He went by what was pleaded from the start. The typing error appears to be in the number 227 in his ruling as opposed to 277 in the pleadings. Even if I was to correct the no. 227 to 277, which I hereby do, the property still remains **EUSONYIRO/NGOROI (or SUGUROI)/BLOCK V11/277** and not **EUASONYIRO/SUGUROI/BLOCK VIII/277** has never been described as part of the deceased’s estate – the application therefore is not just about correcting a spelling error – it is about a property that had not been described or included as part of the estate of the deceased. Hence the parties ought to make the appropriate application for consideration by the court.

The application to amend Justice Mativo’s ruling beyond amending the parcel number from the number 227 to 277 is disallowed. Orders accordingly.

There are no orders as to costs.

DATED AND SIGNED AT NYERI THIS 26TH APRIL 2017

TERESIA. MATHEKA

JUDGE