



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS SUCCESSION CAUSE NO. 378 OF 2006**

**In the Matter of the Estate of ABURI NJERU ALIA M'ABURI M'NCERI (DECEASED)**

**ALIKANJERO KIAMBI ..... PETITIONER**

**RULING**

1. The Summons before me is dated 16<sup>th</sup> February, 2017 and is brought under Section 74 of the Law of Succession Act Cap 160, Laws of Kenya. It seeks the rectification of the certificate of grant by altering the names of the beneficiaries.

2. The application is supported by the Affidavit of Alikanjero Kiambi sworn on 16<sup>th</sup> February, 2017. The grounds for the application have been given as; that the original Petitioner Joyce Igoki M'Aburi died on 14<sup>th</sup> June, 2015; that her share of 0.4 Acres be inherited by his son Alikanjero Kiambi; that one Felix Mbae be given 0.50 Acres and that the share of one Silas Mwiti given to him of 0.50 Acres be allocated to one Jediel Kinoti Nkiria.

3. I have considered the affidavit and the record carefully. I note that there is nothing on record to show that the other beneficiaries have consented to the changes sought to be made. More importantly, Silas Mwiti, who all along was referred to as a son of the deceased and was allocated 0.50 Acres in the distribution of 15<sup>th</sup> July, 2009 is now being said not to be such a son. In an Affidavit sworn by Alikanjero Kiambi on 19<sup>th</sup> March, 2015, it was alleged that the said Silas Mwiti had sold his share to Felix Mbae and had gone to his biological father. In the present application, Alikanjero Kiambi is purporting to give the same said Felix Mbae his share of 0.50 Acres and that the share of Silas Mwiti be allocated to Jediel Kinoti Nkiria.

4. It is not clear from the Affidavit in Support who the said Jediel Kinoti Nkiria is. It is also not clear how Felix Mbae who earlier on in the application dated 19<sup>th</sup> March, 2015 which is on record, was said to be intermeddling with the estate having purchased the share of Silas Mwiti is now being allocated a share by Alikanjero and a new person Jediel Kinoti Nkiria being introduced to take his share that had been allegedly sold to him by Silas Mwiti.

5. In the premises, in the absence of the consent of all the beneficiaries including SILAS MWITI to the proposed rectification, the application cannot stand. Further, there is no evidence that the property is still in the name of the deceased.

6. In order not to subject the parties to further expense by dismissing or striking out the application, I make the following directions under Section 47 of the Law of Succession Act and Article 159 of the Constitution of Kenya:-

(a) let the application be served upon Silas Mwiti within 14 days;

(b) let the Administrator procure the consent of all the beneficiaries and file the same in Court within 30 days.

(c) this matter be mentioned on a day to be fixed for final Orders.

It is so ordered.

**DATED AND DELIVERED AT MERU THIS 18<sup>TH</sup> DAY OF MAY, 2017.**

**A. MABEYA**

**JUDGE**

**18/05/2017**