



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 117 OF 2015**

**THE MATTER OF THE ESTATE OF PHYLLIS MUTHONI M'INOTI (DECEASED)**

**JOSEPHINE MPAKA M'INOTI**

**JEDIEL MWIRIGI M'INOTI.....APPLICANT**

**-VS-**

**LUCIA KABURA FRANCIS.....PETITIONER/RESPONDENT**

**RULING**

**Rectification of grant and authority to sign transmission papers**

[1] This decision relates to two applications dated 18<sup>th</sup> January 2017 and 24<sup>th</sup> January 2017 which are seeking; the Executive officer of court to sign transmission papers, and for rectification of grant respectively. I will invert the order and start with the application for rectification.

**Rectification**

[2] The rectification of grant being sought in by way of an order compelling the Land Registrar to combine land parcel Numbers NGUSISHI SETTLEMENT SCHEME/1188, 1189, 1190 and 1191 for ease of distribution of the estate amongst the beneficiaries. The petitioner stated in the affidavit in support of the application that the certificate of confirmation issued herein was typed contrary to what the parties had agreed, thus, leaving out one of the sisters without any share in the estate. The petitioner has therefore proposed a new mode of distribution.

[3] I must state that rectification of grant is permitted by the law in three situations stated in section 74 of the Law of Succession Act as follows:

**74 “Errors in names and descriptions, or in setting forth 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.”**

See the case of **Succession Cause 261 of 2008, In The Matter of the Estate of HasalonMwangiKahero** where Musyoka J stated that;

**“They permit rectification of grants in three clearly defined cases:-**

**(a) errors in names and descriptions of persons or things;**

**(b) errors as to time or place of death of the deceased;**

**(c) in cases of a limited grant, the purpose for which such limited is made;**

**The power to rectify a grant is limited to these three situations or circumstances.”**

[4] Applying this test, the Petitioner is asking for re-distribution of the estate which cannot be achieved through a simple act of rectification. That notwithstanding, the application raises quite substantial matters which should not be defeated merely on the basis that the approach or form adopted in bringing them to the attention of the court is flawed or inadequate. I have perused the file. On record is an affidavit in support that was filed together with the summons for confirmation on 18<sup>th</sup> January 2016. It would also appear that another affidavit on proposed mode of distribution was filed in court on 2<sup>nd</sup> March 2016. There is a kind of cloud here and it is not clear whether the latter affidavit was brought to the attention of the court. That aside, a more substantial matter is that the late Phyllis Muthoni M’inoti (deceased) who died intestate 30<sup>th</sup> December 2013 had the following children:

1. Josephine Mpaka M’inoti - Daughter
2. Jediel Mwirigi - Son
3. Lucia Kabura - Daughter
4. Faith Nkuene (Deceased) - Daughter

Faith is now deceased. The Petitioner seems to be arguing that major reason for applying is to provide for the children of their deceased sister Faith whose estate did not receive any share in the distribution that was confirmed. Doubtless, this is a substantial question of law and justice especially when you consider the provisions of section 41 of the Law of Succession Act and the principle of representation in relation to inheritance by the children of a deceased beneficiary who is a child of the deceased. Accordingly, it is imperative that the court should ascertain whether the deceased beneficiary had children or dependants before making a final pronouncement on the request for re-distribution. Accordingly, this court shall require all the beneficiaries including the children of Faith Nkuene to attend court on a date I shall appoint. The other application seeking the Executive officer of the court to be empowered to sign transmission papers will also be determined after I have determined the request for re-distribution. It is so ordered.

**Dated, signed and delivered in open court at Meru this 25<sup>th</sup> day of July 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Muthomi advocate for Protestor

Petitioner in person – present

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**F. GIKONYO**

**JUDGE**