



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 442 OF 2012

In the matter of the Estate of NJEGA NJIRATA (Deceased)

NJERU NTHIGA.....PETITIONER/RESPONDENT

V E R S U S

SEPHANIA NYAGA NJAGI.....APPLICANT

R U L I N G

1. By consent of the parties, the application dated 16/08/2013 and 26/10/2016 were heard together and argued by way of written submissions.
2. For purposes of these applications, Sephania Nyaga Njagi is the applicant together with Newton Nthiga Njeru while Njeru Nthiga is the respondent. The first application seeks for review of the ruling of this court delivered on 31/07/2013. It also seeks for directions that the contents of the grant issued on 24/12/1993 applies in the administration of the estate.
3. The grounds contained in the affidavit of one Njeru Nthiga are that there was material non-disclosure by the applicant when the application for rectification was made and that the property which was not a part of the deceased's estate was included in the grant issued on 5/06/1991.
4. The grounds supporting the application dated 26/10/2012 is that the petitioner had implemented the grant in respect of the other assets leaving only L.R. Nthawa/Gitiburi/1319 which was supposed to be shared equally between the applicants Sephania Nyaga Njagi and Newton Nthia Njeru in the two applications.
5. The prayers are for the court Executive Officer of the grant to execute the necessary forms for execution. The applicant in the 2nd application dated 16/08/2013 deposes that the grant issued on 5/6/1991 is the one to be followed because it shared out the land in a fair and just manner while the grant of 24/12/1993 benefit only two people.
6. The facts leading to this application are that the court confirmed the grant in this case on 5/06/1991 in the presence and with the consent of all the beneficiaries. Njeru Nthiga is said to have sneaked back to court and sought rectification of the grant involving only one parcel of land L.R. Nthawa/Riandu/1319.
7. The court allowed the orders sought that parcel should be shared between only two beneficiaries equally between Sephaniah Njagi Nyaga and Newton Nthia Njeru.
8. The learned judge Ong'udi, J. canceled the 2nd grant issued on 24/12/1993 in that it was irregularly

obtained and directed that it was not lawful to have two grants in the same case. The court stated that the grant in force is the one issued on 5/06/1991.

9. The counsel for the 1st applicant Ms. Wairimu has put it correctly that the applicant has not made up a case for review even assuming that this court has jurisdiction.

10. Ms. Wairimu of Rugaita & Co. filed submissions opposing the application for review by Nthiga Njeru on grounds that he has not made a case for review of the ruling of Ong'udi, J. made on 31/07/2013. The proper procedure was to lodge an appeal against the ruling or to seek for revocation of grant.

11. Ms. Wairimu argued further that it is appropriate to allow the application dated 16/08/2013 to facilitate the implementation of the grant issued 27 years ago.

12. She submitted that the supporting affidavit gives grounds of non-disclosure of material facts which are not grounds of review.

13. I find that the prayer for review is the application dated 16/08/2013 is misplaced in that this court has no power to review the ruling of a judge or court of equal jurisdiction.

14. It is my considered opinion that this application lacks merit. The grant was issued almost 30 years ago and has been partly implemented save for L.R. No.Nthawa/ Riandu/1319. The other parties who have been bequeathed their respective shares have taken possession and are utilizing the land.

15. There is no good reason why remaining parcel L.R. 1319 should not be bequeathed their shares. No good reason has been given by the petitioner for failing to execute the necessary documents for the implementation.

16. I am of the considered opinion that the application dated 26/10/2016 is merited.

17. It is hereby allowed in the terms of prayer 1 of the application.

18. The application dated 16/08/2013 is hereby dismissed.

19. Each party will meet their own costs of the two applications.

DELIVERED, DATED AND SIGNED AT EMBU THIS 20TH DAY OF SEPTEMBER, 2017.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Guantai for petitioner/applicant