



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 22 OF 2016**

**(FORMERLY MERU HIGH COURT SUCCESSION CAUSE NO. 28 OF 1985)**

**IN THE MATTER OF THE ESTATE OF THE LATE RINTWARA AMUNDI alias NTWARA  
AMUNDI (DECEASED)**

**FREDRICK MATE M'NTUARA.....1<sup>ST</sup> APPLICANT**

**BEDFORD NJUE NTUARA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**RITHAA NTUARA.....RESPONDENT**

**R U L I N G**

1. **FREDRICK MATE NTUARA** and **BEDFORD NJUE NTUARA** the applicants herein have taken out summons for rectification of grant dated 4<sup>th</sup> April, 2017 under **Section 74** of the **Law of Succession Act** and **Rules 43(1) and 73** of **Probate and Administration Rules**. The grant sought to be rectified is not specified though but this court presumes that the grant sought to be rectified is the one dated 8<sup>th</sup> October, 2013 issued in *Meru High Court Succession Cause No. 28/1985* before the file was transferred to this court and registered under the current No. (22 of 2016).

2. The grounds upon which this application is premised as listed on the face of the application are two and are as follows namely:

*a) That there are errors in acreage in distribution*

*b) There was error in the description of the property.*

3. In their Supporting Affidavit sworn on 4<sup>th</sup> April 2017, the applicants have deposed that the property comprising the estate to wit **KARINGANI/MUGIRIRWA/520** is larger on the ground than is reflected on the register. They therefore suggest that the grant be rectified and distributed as follows:-

(i) Fredrick Mate Ntuara -2.14 acres

(ii) Bedford Njue Ntuara-2.14 acres

(iii) Jebi Ntuara- 2.14 acres

(iv) Benson Njagi Ntuara-2.14 acres

(v) Mate Ntuara- 2.14 acres

(vi) Gilbert Njeru Jotham- 2.14 acres

Interestingly the applicants have omitted the other beneficiaries named in the confirmed rectified grant to wit, Rithaa Ntuara, the Respondent herein, Rithi Ntuara, Evangeline Ntuara Nkoroi and Janet Ntuara. This clearly shows that the application before this court is not about the misdescription or the size of the property forming the estate. No evidence has been tendered to show that the estate is bigger on the ground than what is reflected on the title deed.

4. The respondent has opposed this application terming it mischievous. The Respondent in this Replying Affidavit, sworn on 14<sup>th</sup> June, 2017 has further pointed out various instances of mischief that the applicants have perpetrated. It is contended that the applicants after failing to get their way in Meru High Court decided to file a fresh petition in Chuka vide **Succession Cause No.74/2014** albeit in a covert manner. I have looked at the proceedings in this cause and noted that indeed the applicants are indeed mischievous and were stopped in their tracks through a ruling delivered by this court on 9<sup>th</sup> June 2016.

5. At the hearing of this application, the applicants came out clearly on their intentions in this application and certainly those intentions are quite contrary to the ones listed in the face of their application and their affidavit. It was obvious that the applicants still believe erroneously of course, that the only fair mode of distribution was the one captured in the impugned **Succession Cause No. 74/2014**. This is an issue that was substantively ventilated through an application dated 28<sup>th</sup> July, 2016. This court delivered its decision over the same on 9<sup>th</sup> March 2017 where I inter alia reiterated the decision of this court delivered by the predecessor **Hon. Justice Mabeya** on 9<sup>th</sup> June 2016. The grant in Succession Cause No. 74/14 was nullified and stands revoked. The question of distribution of the estate (**KARINGANI/MUGIRIRWA/520**) of the late **NTUARA AMUNDE** (deceased) was determined vide a rectified certificate of confirmation dated 8<sup>th</sup> October 2013. All the beneficiaries were each given their respective share. The applicants have been expressing their displeasure on the mode of distribution adopted by the court but have been doing so in mischievous, illegal and unprocedural ways. The present application is not any different.

6. The basis for my finding is that in the instant application, the applicants have stated that they would wish to have the grant rectified on grounds of misdescription of the property forming the estate and the purported fact that the surveyor found out that the estate is bigger on the ground than what is reflected on the register. However, the applicants have failed to demonstrate the following:

(i) That the estate was misdescribed in the certificate of the rectified grant dated 8<sup>th</sup> October, 2013. The property described in that said grant is **KARINGANI/MUGIRIRWA/520** which is exactly the description of the estate herein.

(ii) Secondly the applicants have totally failed to avail evidence from the District Surveyor showing that when the surveyor visited the property in question, he found it bigger on the ground to justify rectification of grant to ensure that each beneficiary get equitable share of the extra acreage.

7. It is obvious from the suggested mode of distribution suggested by applicant under paragraph six of the Affidavit in support of the summons for rectification of grant dated 4<sup>th</sup> April, 2017 that the applicants wants to achieve their desired result of locking out some of the beneficiaries of the estate of the late **NTUARA AMUNDE** as identified by this court and listed in the certificate of the rectified certificate of the confirmed grant. Those desires are not only unjustified but contrary to the decisions of this court illustrated in the rulings delivered on 9<sup>th</sup> June 2016 and 9<sup>th</sup> March, 2017.

In the premises, this court finds no merit in the summons dated 4<sup>th</sup> April, 2017. The same is dismissed. The applicants this time are condemned to pay costs because this court finds that they are becoming litigious and vexatious for no apparent good reasons.

**Dated and delivered at Chuka this 31<sup>st</sup> day of October, 2017.**

**R.K. LIMO**

**JUDGE**

**31/10/2017**

Ruling signed, dated and delivered in the open court in presence of both applicants and the respondents.

**R.K. LIMO**

**JUDGE**

**31/10/2017**