



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 71 OF 2005

In the matter of the Estate of JOSIAH NJUE DANIEL (Deceased)

KENNEDY NJUE NTHIGA.....APPLICANT/INTERESTED PARTY

V E R S U S

LEAH NDIA NJERERA NJUE.....RESPONDENT

R U L I N G

1. This matter was before Bwonwonga, J. for hearing of summons for rectification dated 26/08/2010. The parties had filed written submissions to support their arguments. The learned judge felt that since this court had granted the orders of 15/06/2015 which were being challenged, it ought to deal with this application. I find this in order and will proceed to consider the merits of the application.
2. The main prayer in the summons dated 26/06/2015 are that “the orders issued by this court on 15/06/2015 amending the grant and factoring in Leah Ndia Njerera as a beneficiary to the deceased's estate be set aside”. The grounds are that the applicant was not informed of the move by Leah Ndia Njerera yet the applicant was made a co-administrator with the respondent in Runyenjes Succession Cause NO. 39 of 2014 in respect of the estate of Alexander Nthiga Njue.
3. It is stated that the 3 acres formerly bequeathed to Alexander Njue forms part of his estate now that he is deceased. The applicant depones that Leah Ndia Njerera is the widow of the deceased and is his stepmother. The deceased in this cause is the grandfather of the applicant and father to the late Alexander Njue. There are other beneficiaries in the estate of Alexander Njue namely Sue Wanjiru and Stella Karimi who will be prejudiced by the orders made in favour of Leah Ndia Njerera.
4. The application was opposed by the respondent Leah Ndia Njerera in her ground of opposition. She argued that she is the legal wife of the deceased Alexander Njue Njerera having been married under African Christian Marriage and Divorce Act (Cap. 151). She argues that was proposed by the administrator to take over the share of her late husband in this cause. It is further argued that although the grant was confirmed some years back, the grant had not been executed and it was therefore in order to issue the orders of 16/06/2015.
5. The applicant submitted that the orders made were not consistent with the provisions of Section 74 of the Succession Act. The provisions do not envisage a situation where the application for rectification changes the character of the grant.
6. The grant in this case was confirmed by Khaminwa, J. in 2006 and several beneficiaries bequeathed their shares including the respondent herein. Her husband Alexander Njue was bequeathed three acres out of the estate. Upon his death an application for rectification of grant was filed by the administrator to substitute the share of the deceased Alexander Njue to the respondent who was his legal wife and personal representative.
7. It is important to note that the grant had not been executed and no one had challenged the grant. There was no objection to the application from any of the beneficiaries and the court allowed the said application. This did not alter the character of the grant and the respondent took the share of her late husband with no objection from the other parties.
8. The applicant herein claims to be the son of the late Alexander Njue and is a co-administrator together with the respondent in the estate of Alexander Njue. The cause Runyenjes Succession No. 39 of 2014 has not been concluded. The applicant has come in this case as interested party since he holds no portfolio in this case. He is neither an administrator nor a beneficiary in this case.
9. However, the court appreciates the fact that the applicant is a beneficiary in his late father's estate unless the contrary is proved. The respondent has not denied this fact. Neither has she disputed the fact that she never informed the applicant who is the son of her late husband. It is not in dispute that there is a pending succession cause at Runyenjes in respect of the estate of the late Alexander and that the parties in this application are co-administrators. The applicant stated that there are other beneficiaries in the estate of Alexander Njue apart from the parties in this case.

10. The affidavit of the administrator in support of the application for rectification dated 26/08/2015 was so brief in that it did not disclose that the deceased Alexander Njue had children who could be considered as beneficiaries in his estate. It goes without saying that the three acres bequeathed in the original grant to Alexander forms part of his estate. The applicant has confirmed that the 3 acres is part of the deceased's assets in Runyenjes Succession Cause.

11. It would not be in the interests of justice to bequeath the three acres to one beneficiary in the estate with several beneficiaries. The consent of the applicant and the other beneficiaries was not sought by administrator as required by the law before she filed the application for rectification.

12. I find that it is in the interests of justice to set aside the orders of this court made on 16/06/2015. The application dated 26/08/2015 is hereby allowed. In effect the amended grant issued on 16/06/2015 is hereby quashed.

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 31ST DAY OF OCTOBER, 2017.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Kiaritha for Kimani for objector

Objector present