



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT MERU

HIGH COURT SUCCESSION CAUSE NO. 123 OF 2008

LUCY MAITHA..... 1ST APPLICANT

RAEL NJERI 2ND APPLICANT

PAULINE MUKWAITI 3RD APPLICANT

CHARITY UKIMA 4TH APPLICANT

JOAN KAARI5TH APPLICANT

Versus

GERRALD NJUE M'MUGAPETITIONER

RULING

Rectification of grant

[1] Prayers No.1, 2 and 3 in the application dated 20/2/2015 must be granted for reason that all parties have confirmed to their being granted. However, 1st and 2nd administrators were appointed as joint administrators of the estate of the deceased on 4/10/2012 and the grant as well as the certificate of confirmation of grant hereto must reflect that fact. The certificate of confirmation dated 16/10/2014 shows that letters of administration was issued to only the 1st administrator. That is an error that must be corrected forthwith. Therefore, I order and direct that the the 1st administrator to immediately return and surrender to court the letters of administration and certificate of confirmation of grant dated 16/10/2014 for rectification in order to show both administrators of the estate on the face of it. Accordingly prayers 1, 2 and 3 are granted.

[2] I am now left with sub-division of L.R. NO. MUTHAMBI/CHAMUNGA/263. The 2nd administrator argued that the 1st administrator acted alone and contrary to the law when he solely appointed a surveyor to subdivide the estate property. She also contended that the 1st administrator was taking advantage of the typing error on the grant to act alone to the detriment of the 2nd administrator and other beneficiaries. She accused the 2nd administrator of subdividing the estate property in accordance with his claims and wishes rather than the judgment of the court. She was more specific that he intends to place them on hilly and lower side of the land contrary to the judgment of the court. She also made a proposed submission that the 1st administrator did not register the two administrators by transmission before subdividing the land through his chosen private surveyor. She therefore requests the court to abrogate all subdivision that had been done by the 1st administrator and have an independent District

surveyor to carry out the subdivision in accordance with the judgment of the court.

[3] The 1st administrator takes a different view. He says that he appointed a surveyor and paid all his dues after the 2nd administrator failed to co-operate. According to him the said surveyor acted as per the judgment of the court and respected the judgment of the court which contained arider that no development on the land that was to be distributed. He therefore proposed that the 2nd administrator should hire his surveyor to also subdivide the land and file his plan for approval by court. He did not stop there. He also accused the 2nd administrator of ill intention in her application.

[4] The sticky issue is that of subdivision of the suit land. The 1st administrator says that he has always acted in accordance with the law, and that the surveyor gave effect to the judgment of the court herein. One thing that is clear is that the grant herein had a fundamental error. It omitted the 2nd administrator. That error will now be corrected as per this ruling. However, there is nothing to show that the transmission was done to both administrators as per the law so that distribution is done by both administrators to the respective beneficiaries. Indeed, even the 1st administrator admits that the survey works herein as exhibited in the plan annexed to the replying affidavit was done by him solely, except he gives the excuse that he so acted after the 2nd administrator failed to co-operate. In law estates of the deceased must be dealt with in accordance with the law. One of the joint administrators cannot act alone except with the authority of the court. The 1st administrator acted alone in the subdivision of the estate property. That is wrong. And all that he did goes to waste. For those reasons, I will set aside all subdivision that were carried out on the estate property and order that an independent District surveyor shall now carry out the subdivision of the estate property in accordance with the judgment dated 16/10/2014. The surveyor's report to be filed within 60 days of today. I will not ask the executive officer to sign transfer instruments herein as there is no evidence that the 1st administrator shall refuse to sign them in favour of the other beneficiaries. In fact that stage has not come yet. We shall cross the bridge when we reach there. It is so ordered.

Dated, Signed and Delivered in court at Meru this 20th day of January 2016.

F. GIKONYO

JUDGE

In the presence of:

Mokua for Kaumbi for 1st administrator

Mrs Ntaragwi for 2nd administrator and other objectors

Mwenda/Mark – C/c