



IN THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 155 OF 2010

**IN THE MATTER OF THE ESTATE OF ELIZABETH NGANACHIE alias ELIZABETH
NKANACHI M'ARIMI (DECEASED)**

MARGARET NGAUTANI JOSEPH MUKIRA.....APPLICANT

RULING

Rectification of Grant

[1] Before me is an application for rectification of Certificate of Confirmation of Grant dated 26th February, 2015. The basis for seeking rectification of grant is that the confirmed grant assumed the deceased wholly owned the estate properties namely L.R NO NTHIMBIRI/ABONYA/31 and L.R NO NTHIMBIRI/ABONYA/135 yet he owned only 1/3 share in each of the said estate properties. He owned the properties together with other persons. I have had to consult the record and I note that the only registration records filed in court relate to L.R NO NTHIMBIRI/ABONYA/31; and it shows that the deceased owned only 1/3 of this property. I have not seen any registration records for L.R NO NTHIMBIRI/ABONYA/135. I am not, therefore, able to say anything about that property. Again, it is strange that the Petitioner listed only L.R NO NTHIMBIRI/ABONYA/31 in the affidavit in support of the Petition. Nonetheless, the confirmed grant has distributed the two properties and so I do not wish to read too much from the omission. However, one thing is clear; that the issue to be disentangled in this case is not a simple error or omission which can be corrected by mere rectification. Firstly the identity of the estate property has not been ascertained. Similarly, the identity of the distinct share of each beneficiary has not been ascertained. In the circumstances, I should think that, if any effective distribution of the estate is to be achieved in this matter, the court must be provided with the following;

(a) All registration documents for both properties

(b) A survey report showing the actual acreage that is represented by the 1/3 share owned by the deceased in each property. The report should also include the possible excision, subdivision of the said share of the deceased and its location. Of course, subdivision of any property is attended to by many planning and cadastral considerations.

(c) Based on the information in (b) above, appropriate mode of distribution agreed among the beneficiaries.

[2] I do not see any other way of ascertaining the distinct share of the deceased, and consequently of each beneficiary for purposes of distribution of this estate. I appreciate the difficulties such obscurity may cause in the administration of this estate; the administrators have already experienced them and they agree is quite an uphill toil. Therefore, I do not wish to fall into any error which is foreseeable and can be avoided; the above things must be done prior to rectification of the grant herein. Accordingly, I direct the Petitioners to provide the above items or information within such time as shall be agreed by the parties

here. In the meantime, the application for rectification is deferred. It is so directed.

Dated, signed and delivered in open court at Meru this 15th day of June 2016

F. GIKONYO

JUDGE

In the presence of:

All parties present.

F. GIKONYO

JUDGE