

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 222 OF 2010

**IN THE MATTER OF THE ESTATE OF KAMAU NDINGA alias KWARIGIA NDONGA
(DECEASED)**

MARGARET NJOKI KAMAU.....APPLICANT

VERSUS

JULIUS KIBAI.....RESPONDENT

RULING

1. This is an application for rectification of the grant brought by summons under section 74 of the Law of Succession Act (Cap 160) Laws of Kenya and also under Rule 43 of the Probate and Administration Rules. The summons for rectification is supported by three grounds set out on the face of the said summons. The first ground is that there is an error apparent on the face of the record. The second ground is that the share of the estate given to Josiah Munene is not legible on the certificate of confirmation of grant issued on 11th November 2010. The third ground is that the said Josiah Munene was given 1.104 acres out of the estate.

2. The application is anchored in a ten paragraph affidavit in support of the summons for rectification of the grant deposed to by the applicant. The applicant has deposed that she is the administratrix of the estate. She has further deposed that the share given to Josiah Munene is not legible on the certificate of confirmation of grant. She has also deposed that it is only when she was executing the confirmed grant that she noticed that the share of Josiah Munene was not legible. Furthermore, it is her affidavit evidence that she is not seeking to vary the mode of distribution, which had been agreed to by all the beneficiaries. According to that consent on the distribution of the estate, which is annex marked MNK², Josiah Munene was to get 1.104 acres. Finally, the applicant has deposed that she is unable to distribute the estate to the beneficiaries unless the shares of the beneficiaries are legible on the certificate of confirmation of grant.

3. I have considered the affidavit evidence of the administratrix/applicant and I find that the share of Josiah Munene is 1.104 acres. This is clear from the consent on the mode of distribution, which was filed in the High Court on 11th November 2010. I also find that the administratrix is not changing the mode of distribution as agreed to by all the beneficiaries.

4. In the light of the foregoing, I find that the application for rectification of the certificate of confirmation of grant is justified. It is an error apparent on the face of the record. And for that reason, I grant the applicant's application in terms of prayers No. 1 and 2 of the summons for rectification of the grant dated 1st July 2016.

5. There will be no orders to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **16th** day of **AUGUST, 2016**

In the absence of Mr Magee Wa Magee for the Applicant

Court clerk Njue

J.M. BWONWONGA

JUDGE

16.08.16