

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 100 of 2012

IN THE MATTER OF THE ESTATE OF THE LATE MATHEKA NZUYA (DECEASED)

1. SIMON MATHEKA NZUYA

2. NICHOLAS MUTINDA MUTHUSI.....APPLICANTS

RULING OF THE COURT

1. The application before the court is **summons for rectification of grant** dated 24th June, 2016. The application seeks the following orders:

1. That this Honourable court be pleased to remove LR No. Donyo Sabuk/Komarock block 1/59 from the list of the assets of the deceased and proceed to confirm the grant in respect of the other assets as prayed in paragraph 5 of the administrators affidavit sworn on 10th November, 2015.

2. That the cost of this application be in cause.

2. The application is premised on the ground that set out therein and is supported by affidavit of **Simon Matheka Nzuya** sworn on 24th June, 2016.

3. The applicant's case is that he is one of the administrators of the estate of the late **Matheka Nzuya**. The co-administrator **Nicholas Muthusi** has authorized him to swear the affidavit. There is an application dated 8th June, 2016 where they had applied for confirmation of grant wherein all parties consented to the mode of distribution. They have since traced the original title deed in respect of **Land Reference Number Donyo Sabuk/Koma Rock Block 1/59** being one of the assets listed in the petition dated 4th October 2011 and filed on 8th February, 2012. The said property does not form part of the free estate of the deceased as it is registered in the names of the 1st Administrator jointly with his late mother and late brother as evidence by the attached copy marked "MN1". That he swore the affidavit in support of their application that the court be pleased to delete **Land Reference Number Donyo Sabuk/Koma Rock Block 1/59** from the list of assets listed under paragraph 5 of the affidavit sworn on 10th November, 2015 and proceed to confirm the other listed assets accordingly.

4. I have considered the application, the affidavit in support thereof and the attachments. I have specifically noted that the **Title No. Donyo Sabuk/Koma Rock Block 1/59** is in the names of **Mathusi Matheka, Simon Matheka Nzuya** and **Mumbua Matheka** and not in the name of the deceased **Matheka Nzuya**.

5. The application is well founded and the same is herewith allowed as prayed with costs in the cause.

Orders accordingly.

Dated and delivered at Machakos this 13th day of October 2016.

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E. OGOLA

JUDGE

In the presence of:

Mr. Kaberia holding brief for Jean Kiarie for Petitioner/Applicant

Court Assistant – Mr. Munyao