



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 377 OF 2012**

**IN THE MATTER OF THE ESTATE OF NDUNDA KITOLO KITHANA – DECEASED**

**AND**

**IN THE MATTER OF AN APPLICATION FOR RECTIFICATION OF GRANT**

**BY:**

JOSHUA MUINDE KITOLO .....1<sup>ST</sup> PETITIONERS/APPLICANTS

BEATRICE MWANZIA .....2<sup>ND</sup> PETITIONERS/APPLICANTS

NGEI NDUNDA .....3<sup>RD</sup> PETITIONERS/APPLICANTS

MUTINDA WAMBUA .....4<sup>TH</sup> PETITIONERS/APPLICANTS

**RULING OF THE COURT**

1. The Summons for Rectification of Grant before the court is dated 9<sup>th</sup> December, 2015 and filed herein on 3<sup>rd</sup> February, 2016. The application seeks the following orders;

a. That the schedule in the Certificate of Confirmation of Grant issued to **Joshua Muinde Kitolo, Beatrice Mwanzia, Ngei Ndunda and Mutinda Wambua** on 25<sup>th</sup> July, 2014 be rectified in regards to Part II to read that the ownership of Plot No. 34 Kathiani revert to **Joshua Muinde Kitolo** and **Lucas Mwendwa Muindi**, specifically, upon termination of the contract by Safaricom Company Ltd.

b. That the Plot No. 34 Kathiani now be hereby confirmed to **Joshua Muinde Kitolo** and **Lucas Mwendwa Muindi**, specifically.

c. That costs of this application be provided for.

2. The application is supported by affidavit of **Joshua Muinde Kitolo** sworn on 9<sup>th</sup> December, 2015. The applicant's case is that a Certificate of Confirmation of Grant was issued by this court to **Joshua Muinde Kitolo, Beatrice Mwanzia, Ngei Ndunda & Mutinda Wambua** on 24<sup>th</sup> July, 2014. In the Schedule annexed to the Certificate of Confirmation of Granted a genuine mistake was made therein at part II whereby it was not specified that the ownership of Plot No. 34 Kathiani was to revert to **Joshua Muinde Kitolo** and **Lucas Mwendwa Muindi**, specifically, upon termination of the contract by Safaricom Company Ltd. The contract has since terminated and the said **Joshua Muinde Kitolo** and

**Lucas Mwendwa Muindi** now wish to have Plot No. 34 Kathiani confirmed in their name. The same cannot be confirmed without the orders of this court. The said plot No. 34 Kathiani be confirmed to **Joshua Muinde Kitolo** and **Lucas Mwendwa Muindi**. It is imperative that the sought orders of rectification be granted so as to enable the applicants wholly administer the estate of the deceased and to have the said Plot No. 34 Kathiani registered in the names of **Joshua Muinde Kitolo** and **Lucas Mwendwa Muindi**, the applicants herein.

3. The application is not opposed and is supported by the four administrators. I allow the application in the following terms;

- a. That the schedule in the Certificate of Confirmation of Grant issued to **Joshua Muinde Kitolo, Beatrice Mwanzia, Ngei Ndunda and Mutinda Wambua** on 25<sup>th</sup> July, 2014 be rectified in regards to Part II to read that the ownership of Plot No. 34 Kathiani revert to **Joshua Muinde Kitolo** and **Lucas Mwendwa Muindi**, specifically, upon termination of the contract by Safaricom Company Ltd.
- b. That the Plot No. 34 Kathiani now be hereby confirmed to **Joshua Muinde Kitolo** and **Lucas Mwendwa Muindi**, specifically.
- c. That costs of this application shall be in the cause.

**DATED AND DELIVERED AT MACHAKOS THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2016.**

**E. OGOLA**

**JUDGE**

**In the presence of;**

Mr. Kyalo holding brief for M/S Wambua for applicant

Court Assistant – Mr. Munyao