



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 423 OF 2009**

***(IN THE MATTER OF THE ESTATE OF JERIOTH NYAWIRA MUNYUA (DECEASED))***

**HANNAH NYANJUGU GICHOHI.....APPLICANT**

**RULING**

The grant in respect of the estate of the deceased in this cause was confirmed on 12<sup>th</sup> April, 2012 and the certificate of confirmation was issued accordingly. The only asset listed in the affidavit in support of the petition for grant of letters of administration intestate as comprising the deceased's estate is a land parcel, **Title No. Othaya/Ihuririo/845**; it was distributed as follows:

1. Eliud Mwangi Mbiuki.....0.47 ha
2. Esther Wachinga Munyua.....2.07 ha
3. Mary Wambui Kibui.....0.52 ha
4. Gladys Mweru Kiiru.....0.47 ha
5. Jane Gachambi Munyua.....0.44 ha
6. Hannah Nyanjugu Gichohi.....0.45 ha
7. Teresa Wambui Munyua.....0.52 ha
8. Faith Nyawira Gachihi.....0.49 ha
9. Martha Wangechi Munyua.....0.24 ha

This distribution was based upon the affidavit sworn by the applicant, who is one of the administratrixes of the estate, in support of the summons for confirmation of grant. During the confirmation proceedings, counsel for the petitioners is recorded to have informed the court that all these beneficiaries were present in court. There is nothing on record to suggest that any of them objected to or protested against the distribution of the estate as proposed by the applicant.

By a summons in general form dated 7<sup>th</sup> August, 2014 and filed on 14<sup>th</sup> August, 2014 the applicant sought from this Court for an order to amend the grant confirmed on 12<sup>th</sup> April, 2012. The amendment sought was a variation of the distribution of the estate in respect of shares given to the applicant herself, Teresa Wambui Munyua and Martha Wangechi Munyua; instead of their previous allocations, the applicant sought to have them share the estate as follows:

1. Hannah Nyanjugu Gichohi.....0.52 ha

2. Teresia Wambui Munyua.....0.69 ha

Martha Wangechi Munyua is not getting any share in this new scheme; according to the applicant, whatever share she received earlier was Teresia Wambui's and thus implying that Martha Wangechi Munyua was not to get anything at all from the estate; she would effectively be disinherited.

Under the proviso to **Section 71(2)** of the **Law of Succession Act**, the grant of letters of administration in cases of intestacy can only be confirmed once the court is satisfied as to the respective identities and shares of all persons beneficially entitled; further, when confirmed, the grant must specify all such persons and their respective shares. I suppose it is in this spirit that the grant in respect of the deceased's estate was confirmed on 12<sup>th</sup> April, 2012, in the presence of all the beneficiaries.

The applicant's current application is a departure from this provision of the law to the extent that it tends to exclude from inheritance one of the deceased's children. It is improbable that the court could have entertained confirmation proceedings and confirmed the grant without being satisfied as to the respective identities and shares of all the persons beneficially entitled to the estate including Martha Wangechi Munyua. Although the applicant has sworn in the affidavit in support of the summons that all the beneficiaries are agreeable to the proposed distribution of the estate, there is no consent that has been filed in that respect; neither has Martha Wangechi Munyua filed anything to suggest that she has renounced her right of inheritance.

Be that as it may, the amendment sought constitutes a fundamental departure from the summons upon which the grant was confirmed; I doubt such material variations are catered for under **section 74** of the Law of Succession Act which is the only provision in the Act that provides for alteration and revocation of grants. According to this section, the circumstances under which a grant may be altered or amended are clearly prescribed and, in my humble view, they do not include such material alterations or amendments as variations in the distribution of the shares of a deceased's estate; it provides as follows:

***74. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.***

Strictly speaking, it is only the errors in the names either of the deceased or of the beneficiaries or their descriptions, for instance, the description of their relationships; or the time and the place of death of the deceased that may be rectified or amended. It is not open to the parties to come to court every time they appear to change their mind on the distribution of the estate after the grant has been confirmed and purport to apply to amend the confirmed grant. This, in my humble view, is an abuse of the process of the court. I also think that if parties were allowed unfettered freedom to alter a confirmed grant, the conclusion of succession causes would be indeterminate and would be open to litigation ad infinitum. Such cannot have been the intention of the legislature when it came up with **section 74** of the Act.

My conclusion is that the deceased's estate should be distributed as per the confirmed the grant; if the beneficiaries are agreeable, as the applicant has suggested, that one beneficiary's share should devolve upon any other beneficiary or beneficiaries, they can still achieve the same goal even after the transmission of the estate. They do not have to involve the court as the applicant has purported to. In the ultimate I hold that the applicant's application has no legal basis and is misconceived. It is hereby dismissed.

**Signed, dated and delivered in open court this 16<sup>th</sup> December, 2016**

Ngaah Jairus

**JUDGE**

