



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 534 OF 2011**

**IN THE MATTER OF THE ESTATE OF KILOTI MUTINDA (DECEASED)**

AND

**MULU NDAKU MUTINDA.....PETITIONERS**

**RULING**

1. This is an application for Rectification of a Grant. It seeks orders as follows:-
  - i. **That the Grant of Letters of Administration confirmed on 20<sup>th</sup> July, 2012 and issued on the 1<sup>st</sup> October, 2012 to the said Nzoka Kiloti Mutinda and Mulu Ndaku Mutinda in this matter be reviewed and/or revoked and fresh letters re-issued in order to substitute and/or delete the names Nzoka Kiloti Mutinda who died on 16<sup>th</sup> September, 2013 and who is the first administrator and/or beneficiary of the Estate of the deceased herein.**
  - ii. **That the honourable court be pleased to order that Jackson Musyoka Mwambui do substitute the said Nzoka Kiloti Mutinda as the 1<sup>st</sup> administrator of the estate of the deceased herein.**
  - iii. **That the said Mulu Ndaku Mutinda and Jackson Musyoka Mwambui be given ½ (half) share of land parcel Nzau /Nziu/57.**
  - iv. **That costs herein be paid out by the Estate of the deceased.**
2. The application is supported by an affidavit deponed by **Mulu Ndaku Mutinda** an Administrator of the estate of **Kiloti Mutinda** (deceased). He depones that a Grant of Letters of Administration was issued to him and the deceased. There is need for substitution of the deceased. He further prays for the portion of land that was to be distributed to the deceased to be shared equally between him and his surviving brother since the deceased did not have any nuclear family.
3. A consideration of status of this case shows that the deceased was survived by **Nzoka Kiloti Mutinda** a son aged **87 years** and his nephew **Mulu Ndaku Mutinda** and **Jackson Musyoka Mwambui** his nephews aged **77** and **55 years** respectively. **Nzoka Kiloti Mutinda** and **Mulu Ndaku Mutinda** were issued with a Grant of Letters of Administration intestate. The grant was confirmed whereby assets were distributed between **Kiloti Mutinda** and **Maithya Mbulu**. Each was entitled to ½ share of **Plot No. Nzau/Nziu 57** measuring **14.0 Hectares**
4. By a burial **Permit No. 139142** the Applicant has demonstrated that **Nzoka Kiloti Mutinda** died on **16<sup>th</sup> September, 2013**. At the hearing the applicant and his co-beneficiary stated that the deceased was not survived by any beneficiary. It is evident that **Jackson Musyoka** a beneficiary of the estate of the deceased had not been given any share of the Estate of the deceased. I therefore allow the application by making orders as follows.
  - i. **Nzoka Kiloti Mutinda** shall be substituted as an Administrator of the Estate of **Kiloti Mutinda** by **Jackson Musyoka Mwambui**.
  - ii. Prior to rectification of the Certificate of Confirmation of Grant a letter be availed from the Area Chief to establish that the deceased **Nzoka Kiloti Mutinda** had no heirs/dependants.

**DATED, DELIVERED and SIGNED this 24<sup>th</sup> day of JANUARY, 2014.**

**L.N. MUTENDE**

**JUDGE**