



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO.524 OF 1999

IN THE MATTER OF THE ESTATE OF: GITHUI KIGUAHARI.....DECEASED

AND

SUSAN MUCHIRU GITHUIPETITIONER/APPLICANT

VERSUS

FRANCIS KAMWENJI GITHUI

JESSEE NGARI GITHUI RESPONDENTS

RULING

1. By a summons for rectification of grant under **Section 74, 83, Rule 49, 73** of **Probate & Administration Rules** the applicant SUSAN MUCHIRU GITHUI moved the court for order that the:-

1. **The certificate of confirmation of grant of letters of administration intestate made to the said SUSAN MUCHIRU GITHUI dated 18th November 2008 be rectified as follows:-**

a. **That land reference NO. GAKAWA/KAHURURA BLOCK 1/240 be distributed as hereunder:-**

i. Susan Muchiru Githui – entire parcel.

2. The application was supported by the affidavit of the applicant in which it was deponed that the deceased was registered owner of LR GAKAWA KAHURURA/BLOCK 1/240 which was distributed as follows:-

- i. **Francis Kamwenji Githui50%**
- ii. **Jessee Ngari Githui25%**
- iii. **Cyrus Githui Ngari and**
- iv. **Samuel Mugweru Ngari25% jointly**

3. It was deponed that she would like the grant to be rectified and the land redistributed afresh to enable her sell a portion of the land to enable her settle medical bills and legal fees arising from litigation from 1991.

4. It was further deponed that the entire parcel comprises about Eight acres had remained registered in the name of the deceased on account of non-co-operation by her two sons namely JESSEE NGARI GITHUI and FRANCIS KAMWENJI GITHUI who had declined to facilitate registration of the transfer

and the proposed sale. It was further deponed that she had no other means of livelihood as she had transferred her income generating property namely LR MAGUTU/GAIKUYU to her children including the two named.

5. It was further deponed that none of her children were able to assist her financially or were otherwise unwilling to do so.

6. In reply to the said application FRANCIS KAMWENJI GITHUI swore an affidavit on 5th March 2014 in which he deponed that the applicant sought to pay her own bills which is not provided for under **Section 83** of the **Law of Succession** which only limits the payment from the estate by the personal representative of debts or bills incurred by the deceased.

7. It was further deponed that after the confirmation of grant the suit land was distributed as per the confirmed grant and the applicant retained MAGUTU/

8. GAIKUYU where she picks tea and has dairy cows and that the applicant by her application intends to totally disinherit them.

Submissions

9. It was submitted by the applicant that by the time the succession was filed the respondents were minors and that the applicant intended to have part of the Estate sold to take care of her interest and the cost she urged the court to use its discretion to reduce each respondent's entitlement by one (1) acre.

10. On behalf of the respondent it was submitted that the application had not met the conditions set for rectification of grant and that the application is not made in good faith since she intends to sell the entire estate.

1. Section 74 of the Law of Succession Act and Rule 43 (1) of P&A rules provides as follows:-

2. “Section 74 “Errors in names and description or in setting out 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.”

3. Rule 43 (1) sets out the procedure as follows:-

4. “Where the holder of a grant seeks pursuant to the provisions of section 74 of the act rectification of an error in the grant as to the name or description of any person or thing as to time or place of death of the deceased or in the case of a limited grant, the purposes for which the grant was made he shall apply”

11. It is clear that the application before the court is not in respect of rectification of grant as provided for under the said section of the Succession Act but an attempt by the applicant to Review and set aside the confirmed grant herein without providing a suitable reason for the same having by her application dated 5th September 2008 confirmed the grant and distributed the estate as per the certificates of confirmed grant issued herein.

12. I therefore find no merit on the application herein and would agree with the respondent that the application is not made in good faith. The application dated 6th November 2013 is therefore dismissed with no order as to cost noting that the applicant is the respondents' mother who is entitled to their support in old age.

Signed and dated this day of 2014

J. WAKIAGA

JUDGE.

Delivered by Justice J. Ngaah on behalf of Justice J. Wakiaga this 18th day of December, 2014

J. NGAAH

JUDGE.

In the presence of:

----- for Petitioner/Applicant

----- for Respondents