

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 665 OF 2009

**IN THE MATTER OF THE LATE EVANSON KAMURI KAMURU ALIAS KAMURI S/O
KAMURU-(DECEASED)**

GLADYS WAIRIMU KAMURI1ST APPLICANT

MICHAEL MURIUKI KAMURI2ND APPLICANT

VERSUS

JACKSON MWANGI KAMURI1ST RESPONDENT

LAWRENCE MURAGE KAMURI2ND RESPONDENT

RULING

The subject matter of this ruling is the summons dated 9th June, 2011 in which **Gladys Wairimu Kamuri** and **Michael Muriuki Kamuri**, (*the Applicants*) are seeking to have the grant rectified to have the deceased's widow **Gladys Wairimu** and daughter **Margaret Wambui Kamuri** included as beneficiaries of the Estate of Evanson Kamuri Kamuru alias Kamuri s/o Kamuru, deceased. **Jackson Mwangi Kamuri** and **Lawrence Murage Kamuri** (*Respondents*) vehemently opposed the Application on the basis that the same does not conform with the provisions of **Section 74** of the **Law of Succession Act** and **Rule 43** of the **Probate and Administration Rules**. It is the argument of the Respondents that an application for rectification is limited to errors in names and descriptions or in setting out time and place of the deceased.

I have carefully considered the material placed before me plus the written submissions filed by both sides. I have already stated that the application dated 9th June, 2011 seeks to have the names of Gladys Wairimu Kamuri and that of Margaret Wambui Kamuri included in the certificate of the confirmed grant as beneficiaries of the Estate of Evanson Kamuru Kamuri alias Kamuri s/o Kamuru, deceased. The applicants are basically saying that the aforesaid two beneficiaries are entitled to inherit a portion of the parcel of land known as **L.R. NO. Magutu/Gatei/114**. It is said that though the duo were listed as beneficiaries in the cause, they were omitted in the sharing in the schedule of distribution. It is argued that the name of Margaret Wambui Kamuri was omitted by error when the certificate of the confirmed grant was extracted hence the mistake should be corrected. The family is divided as to whether or not Gladys Wairimu Kamuri's name should be included as a beneficiary. The applicant has asked this court to include her as a beneficiary to share the land in equal measure. She deponed that she has encountered a lot of problems after the deceased passed on. She alleged that her home was demolished and rebuilt on another part of the land. She further averred that she was left a destitute when the deceased's children took over the proceeds from the tea bushes she used to receive for her subsistence. The Respondents do not deny that the certificate of the confirmed grant is faulty. The same does not contain the names of Gladys Wairimu Kamuri and Margaret Wambui Kamuri as beneficiaries yet the duo were named as beneficiaries in the schedule of those person who survived the deceased. In my humble view, the omission can be regarded as an error whether intentional or accidental. It would appear in my mind that the mistake was done intentionally to lock out the duo from sharing the Estate. A fair order in the circumstances is to allow the summons dated 9th June, 2011 which I hereby make. The name of Margaret Wambui Kamuri be included as amongst the deceased's children to share **L.R.NO. Magutu/Gatei/144** in equal measure. The widow, i.e Gladys Wairimu Kamuri should have a life interest.

Each party to bear his or her own costs.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Kingori for Respondents and

Muchiri holding brief for Ann Thungu for Petitioners