

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 200 OF 2007

IN THE MATTER OF THE ESTATE OF ZADOCK MUGANGAI MULONGO- DECEASED

PRISCILLA KAVUKA MULANGO PETITIONER

V E R S U S

WILLIAM MANYASI MUGANGAI OBJECTOR

R U L I N G

The application dated 7.4.2011 seeks an order of rectification of the certificate of confirmation of grant issued on the 7.10.2010. The application is supported by the affidavit of the petitioner. The respondent filed a replying affidavit sworn on the 26.9.2011. Parties agreed to file written submissions but no submissions were filed by both parties.

The application seeks to rectify the grant whereby the petitioner would like plot number **KAKAMEGA/CHEKALINI/1876** be in the names of **LEVI MUGANGAI**. The petitioner contends that there was an error as that particular plot was to be inherited by Levi. She further contends that her affidavit sworn on 22.7.2010 in support of the application for confirmation of the grant had an error. Therefore she would like that error to be rectified.

The objector on his part contends that there is no error on the grant and that the petitioner is their step mother who has sold part of plot number 1869 and would like now to benefit from the other plot. According to the objector it is the petitioner who convinced them to take plot number 1876 and she cannot therefore turn around and say that there was an error.

The record shows that the deceased herein had two wives. The petitioner is the 2nd wife. The petitioner made her proposed mode of distribution in her affidavit sworn on the 22.7.2010. That affidavit indicates that her co-wife had four sons namely the objector William Mugangai, Timon Machayo, Stephen Masinde and Amos Lunyangi. On her part she had two sons with the deceased namely Levi Mugangai and Moses Magomere. In the said affidavit the petitioner wanted the court to distribute the estate according to the houses whereby the 1st house was to get plot numbers **KAKAMEGA/CHEKALINI/1873** and **1876** while the 2nd house was to get plot number **KAKAMEGA/CHEKALINI/1869**. The court went ahead and confirmed the grant in those terms whereby Justice Lenaola directed that the distribution to the individual beneficiaries was to be agreed upon amongst the children of each house.

From the above it is clear that it is the applicant who wanted the grant to be confirmed on those terms. The grant was confirmed as per the petitioner's wish and parties took their respective portions. I do agree with the objector that there is no error on the grant and the application is only meant to benefit the 2nd house. The petitioner is not telling the court what will happen to the beneficiaries from the 1st house if plot number **1876** is given to Levi Mugangai who is from the 2nd house. The effect of the application is to give the 2nd house plot numbers **1876** and **1869** while leaving the 1st house with plot number **1873** only. I do find that the application lacks merit and the same is dismissed with no orders as to costs.

Dated at Kakamega this 4th day of December 2013

SAID J. CHITEMBWE

J U D G E