



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 513 OF 2006

**IN THE MATTER OF THE ESTATE OF
GERISHON KARIITHI WERUDECEASED**

CHARLES NGATIA NGUYOAPPLICANT

versus

EKIRA GATHONI KARIITHI..... 1STRESPONDENT

TERESIA MUMBI KARIITHI.....2ND RESPONDENT

RULING

Charles Ngatia Nguyo, the applicant herein, took out the Summons General dated 8th November 2010, in which he sought for the following orders:

- 1. That the court be pleased to grant the applicant herein leave to file an amended P & A 5 to include land parcel no. MAGUTU/GAIKUYU/952,MAGUTU/GAIKUYU/953,MAGUTU/GAIKUYU/955, and MAGUTU/GAIKUYU/956.**
- 2. That the court be pleased to amend the certificate of confirmation of grant distributing the additional property thus:**
 - a. Charles Ngatia Nguyo to get MAGUTU/GAIKUYU/952, MAGUTU/GAIKUYU/953 and 0.25 acres from MAGUTU/GAIKUYU/955 to make 2.62 acres**
 - b. The respondent to get the remainder.**

The summons is supported by the affidavit of the applicant sworn on 8th November 2010. Ekira Gathoni Kariithi and Teresia Mumbi Kariithi the 1st and 2nd Respondents herein opposed the summons by filing the replying affidavit of Ekira Gathoni Kariithi, the 1st Respondent herein.

A careful consideration of the material placed before me will reveal that the applicant is basically seeking for the rectification of the confirmed grant and for the re-distribution of the assets of the estate. The applicant is saying the above mentioned properties were excluded from the estate during distribution. The Respondent urged this court to dismiss the summons for two main reasons. First, it is argued that the applicant is a beneficiary nor an objector nor a petitioner nor a protestor hence he has no locus standi to file the application.

Secondly, it is argued that the above mentioned properties were intentionally left out of the deceased estate because they were already been transferred to other parties during the lifetime of the deceased.

The material placed before this court indicates that the grant of letters of administration intestate was made to the Respondents on 8th March 2006 and confirmed on 12th October 2007. It is apparent from the confirmed grant that the following properties were listed as the assets of the estate:

- (i) L.R. no. Mutara/Thome Block 1/1567

- (ii) Shares with K.T.D.A.
- (iii) Cash in A/C no. 5628115 with Barclays Bank.

The Respondents were listed as the only beneficiaries eligible to inherit the deceased's estate. Essentially, the Respondents were supposed to include the parcels of land known as :

L.R. no. Magutu/Gaikuyu/952

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L.R. no. Magutu/Gaikuyu/956

as part of the estate assets. They have however explained the reasons why the same were excluded. The main reason being that they had been transferred to other parties during the lifetime of the deceased. In fact the Respondent have annexed to the replying affidavit the relevant documents to prove that. On this ground alone, the summons must fail as it lacks merit.

Even if the applicant's application had merit, I doubt whether he can succeed because there is no mistake or error to be corrected. First the properties complained of were purposely excluded by the Respondents. Secondly, even if the subject properties were excluded by mistake, the correct cause of action is to take out the necessary proceedings relating to the deceased's unadministered assets.

For the above reasons, the summons dated 8th November 2010 is ordered dismissed with costs to the Respondents.

Dated and delivered this 29th day of July 2011.

J.K. SERGON
JUDGE

In open court in the presence of Miss Mwai holding brief for Muthigani for Respondent. No appearance for the Applicant.