



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Succession Cause 140 of 2005**

**IN THE MATTER OF THE ESTATE OF M'MUGUNA MARAA...DECEASED**

**KIREVI M'MUTHURI.....PETITIONER**

**V E R S U S**

**THOMAS MUTHURI.....1<sup>ST</sup> OBJECTOR**

**JOHN GITONGA.....2<sup>ND</sup> OBJECTOR**

**LAW OF SUCCESSION**

- A grant may be rectified on account of error or other good cause s. 74 Law of Succession Act Cap 160, Laws Of Kenya.

**R U L I N G**

By Grant confirmed on 23<sup>rd</sup> October 2006, the Petitioner herein Kirevi M'Muthuri was granted 1.21 hectares of Title No. NYAKI/GIAKI/2387, and the balance of the said land was given to one Stephen M'Mugambi.

However when the Applicant approached the Land Office he was advised that the suit land is not 1.21 Hectares but rather 1.179 Hectares which is slightly less than 1.21 Hectares. By a Chamber Summons dated 16<sup>th</sup> April 2007, the Applicant sought two prayers **firstly** that the District Surveyor Meru Central do visit the suit-land and take measurements to determine its acreage and thereafter make a report thereon to the Court. **Secondly** the Applicant prayed that the confirmed Grant of 23.10.2006 be rectified and/or amended as per paragraph 6 of the Affidavit annexed to the Chamber Summons.

The first prayer was granted on 17<sup>th</sup> September 2007 and the District Surveyor Meru Central District made his report dated 15<sup>th</sup> October 2007, and filed it in court on 16<sup>th</sup> October 2007.

The Application was argued before me by Miss E. G. Mwangi learned counsel for the Petitioner while Mr. Ondari urged the Application for the Respondent. The issue is whether the confirmed grant should be rectified to conform with the area of 1.179 Hectares in the Lands Register in the Lands Office, and not 1.21 Hectares in the Confirmed Grant which gave the Petitioner the entire 1.21 Hectares, and a "**balance**" to the Respondent.

The Report by the District Surveyor is conclusive as to the exact area of the suit land. It is 1.179 Hectares, and not 1.21 Hectares. Mr. Ondari learned counsel for the Respondent sought to resist this position by reference to the Agreement for Sale attached to the Petitioner's Supporting Affidavit to the Chamber Summons which refers to title No. NYAKI/GIAKI/1956 and not title No. NYAKI/GIAKI/2387. This discrepancy was however explained by the Further Affidavit of the Petitioner sworn on 29<sup>th</sup> April 2008 that Title No. NYAKI/GIAKI/2387 is comprised of the amalgamation or combination of Title Nos. NYAKI/GIAKI/1584 and 1956 that is to say, 0.607 ha and 0.572 Ha respectively which make a total of 1.179 Ha. and not 1.21 Ha.

This is not an application for enforcement of an Agreement for Sale of land. This is an application for

rectification of a Confirmed Grant. This court is not competent at this stage to go behind the sale agreement. To do so, the Respondent will need to bring a substantive suit to establish a case, if any.

In accordance with the report of the District Surveyor Meru Central District, the area of title No. NYAKI/GIAKI/2387 is 1.179 Ha. and not 1.21 Ha which in my conversion of 1.0 Ha being equal to 2.4711 acres translate to  $2.4711 \times 1.21 = 2.99031$  acres and  $2.4711 \times 1.179 = 2.92069$  acres, which in either figure translates to approximately 3.0 acres and thus leaving no balance to the Respondent.

The Petitioner will therefore succeed in his Chamber Summons of 16<sup>th</sup> April 2008 and the grant confirmed on 23.10.2006 shall be rectified in terms of paragraph 6 of the Supporting Affidavit of the Petitioner sworn on 16<sup>th</sup> April 2007, that is to say the whole of Title No. NYAKI/GIAKI/2387 be registered in the name of the Petitioner Kirevi M'Muthuri. There is no balance left for the Respondent or any other person. There shall be orders accordingly.

I further direct that each party shall bear its respective costs.

Dated and delivered at Meru this 25<sup>th</sup> day of July 2008

**M. J. Anyara Emukule**

**Judge**