



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 58 OF 1992

IN THE MATTER OF THE ESTATE OF M'TWORUCHIU M'MWANJA
(DECEASED)

DAVID MWENDA APPLICANT

RULING OF THE COURT

The applicant, DAVID MWENDA MURIUKI filed his application dated 10.12.2003 on 7.1.2004 in which he seeks the following prayers:-

1. That this honourable court do allow the applicant to rectify some of the names in the previous confirmation of grant.
2. That the court further grant an order to substitute the name of the deceased ESTHER WANJIRA M'TURUCHIU with the name of the applicant DAVID MWENDA MURIUKI for reasons stated in the supporting affidavit.

Though the applicant does not indicate under what section and/or rule of the Law of Succession Act he has filed his application, he depones in the affidavit that the deceased was his grandfather and that the deceased was registered proprietor in freehold of land parcel No. ABOTHUGUCHI/KATHERI/1580 and that though the grant of letters of administration intestate were confirmed on 17.6.1997 and distribution of the deceased's estate was done, some of the names of the beneficiaries of the deceased's estate were incomplete and should be rectified in order to tally with their names in the identity cards.

The four names the applicant seeks to have rectified are:-

1. Justus Muriuki M'Turuchiu ID No. 2387496.
2. James Mbichi I. Ituruchiu ID No. 16026902.
3. David Mwenda Muriuki ID No. 11057501.
4. Esther Wanjira M'Turuchiu ID No. 4476252.

All the documents which were alleged to have been annexed to the affidavit "DMMI" – being letter from the chief confirming names as given at paragraph 9 of the affidavit and "DMM2" being the deceased burial permit serial No. 707982 were not annexed.

I have considered the application by the applicant which is both for substitution of a deceased beneficiary and also for rectification and/or correction of names in the confirmed grant. I have also noted

that a document allegedly annexed to the supporting affidavit and marked “DMMIII” – being a letter from the chief to confirm death of Esther Wanjira M’Turuchiu which occurred on 18.10.2000 was not annexed. On these facts, the court is unable to grant the orders sought. First and foremost, substitution cannot be made in the absence of grant of letters of administration intestate. The applicant has to apply for and obtain the grant in accordance with the provisions of sections 39 and 67 of the Law of Succession Act. Administration of the deceased’s estate cannot be done on the strength of a chief’s letter even if such a letter were annexed to the applicant’s affidavit. No evidence of grant of letters of administration intestate to the estate of Esther Wanjira M’Turuchiu (widow and beneficiary of original deceased M’TWARUCHIU M’MWANJA alias M’TWARUCHIU MWAJA has been produced by the applicant herein. Someone has to be appointed administrator of the estate of the said ESTHER WAJIRA M’TURUCHIU in order that that person may administer the estate of the deceased which includes the one (1) acre piece of land being land parcel No. ABOTHOGUCHI/KATHERI/3702 which belonged to the original deceased herein. In the circumstances, the applicant herein cannot call himself the legal representative of ESTHER WANJIRA. Section 3 of the Law of Succession Act, Cap 160 Laws of Kenya gives the following definitions:-

“Administrator” – means a person to whom a grant of letters of administration has been made under this Act.

“Personal representative” - means the executor or administrator of a deceased person.

“Representation” – means the probate of a will or the grant of letters of administration.

The applicant is not any of the persons defined as above, and can therefore not be classified as a personal or legal representative of Esther Wanjira M’Turuchiu. Secondly, I am unable to grant the orders sought as the applicant has combined two totally distinct applications in one application. It has also become apparent that the applicant is not merely seeking a correction of the names of the beneficiaries in the confirmed grant but what he seeks is a substitution of a deceased beneficiary.

For these reasons, the application is refused. The applicant should first of all apply for and obtain letters of administration intestate to the estate of Esther Wanjira M’Turuchiu after which he can then take other necessary steps for the distribution of the deceased’s estate in accordance with the provisions of the Law of Succession Act, Cap 160 laws of Kenya. I make no orders as to costs.

Dated and delivered at Meru this 20th day of December 2004.

RUTH N. SITATI

Ag JUDGE

20.12.2004