



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 3117 OF 2002

IN THE MATTER OF THE ESTATE OF KARANJA MUTEGI alias JACKSON KARANJA MUTEGI (DECEASED)

BENSON NJIHIA KARANJA1ST APPLICANT

ELLEN WANJIKU MBATIA2ND APPLICANT

RACHAEL WANJIRU KAMIRI3RD APPLICANT

SAMMY KARANJA KAMIRI4TH APPLICANT

V E R S U S

JOHN MUTHUMA 1ST RESPONDENT

DOUGLAS MWANGI KARANJA2ND RESPONDENT

VIRGINIAH NYAMBURA RUGANO3RD RESPONDENT

RUTH WAMBUI NDUNGU..... 4TH RESPONDENT

RULING

(1) Before this Court is the Summons for Rectification of Grant dated 21st February 2020, by which the Applicant **BENSON NJIHIA KARANJA** sought the following orders:-

(a) THAT the Grant of Letters of Administration intestate of Karanja Mutegi alias Jackson Karanja Mutegi (Deceased) issued to Douglas Mwangi Karanja, John Muthuma Karanja and Benson Njihia Karanja by this Honourable Court on 2nd May 2003 and confirmed on 14th November 2018 be rectified in the following respects as provided for Rule 43(1) of the Probate and Administration Rules.

(b) THAT the name Sammy Karanja Kamiri who is one of the beneficiaries of the estate of Karanja Mutegi alias Jackson Karanja Mutegi (Deceased) be rectified from the name Samuel Karanja as that is his correct name.

(c) THAT the area of the piece of land to be excised from the Land Reference LOC.2/KINYONA/354 covering the homestead and the graves of KARANJA MUTEGI alias JACKSON KARANJA MUTEGI, JOINAH WAITHIRA KARANJA both (Deceased) was indicated in the Certificate of Confirmation of Grant as 0.135 acre which has been noted by the surveyor as bigger than the size previously indicated and therefore should be rectified to be 0.10Ha. (0.247 acre) to reflect the correct size.

(d) THAT the Deputy Registrar of this Honourable Court be and is hereby authorized to execute all the necessary transfer documents on behalf of Douglas Mwangi Karanja and John Muthuma Karanja the Co-administrators of the estate of Karanja Mutegi alias Jackson Karanja Mutegi to speed up the process of finalization of this matter.

(e) THAT the Certificate of Confirmation of Grant be rectified to the effect that bank account No. 40-177007125 upgraded to read as 1107018994 held by Karanja Mutegi alias Jackson Karanja Mutegi (Deceased) in Kenya Commercial Bank Kangari Branch in the following manner:-

(i) The Manager, Kenya Commercial Bank, Kangari Branch be and is hereby ordered to issue a bank cheque for Kenya Shillings One Hundred and Seventy (Kshs. 170,000/-) only payable to Joseph M. Githii the Surveyor being a further deposit to enable him finalize the process of survey work and registration of documents in Murang'a Lands Office to the level of obtaining title deeds as stipulated in the Certificate of Confirmation of Grant in respect of lands known as Loc. 2/Kinyona/354 and Loc. 2/Kangari/2764. The cheque to the Surveyor should be released through Benson Njihia Karanja to ensure the process is finalized.

(ii) The Manager, Kenya Commercial Bank Kangari Branch do issue another bank cheque for Kshs. 45,000/- payable to Murang'a County Government being their levy as contained in the Kenya Gazette Supplement No. 12 (Murang'a County Acts No. 5 of the County Finance Bill).

(iii) The Manager, Kenya Commercial Bank, Kangari Branch do pay to Benson Njihia Karanja a sum of Kshs. 8,000/- to enable him pay Kshs. 2,000/- for Land Control Board Consent applications fee to subdivide lands known as Loc. 2/Kinyona/354 and Loc. 2764, pay bus fare to Murang'a to deliver the cheque to Murang'a County Government, Murang'a and office to pay Land Board fee, travel to Kigumo Sub-County in the Chairman's office, Land Control Board to book for the Land Boards and spend the balance as out of pocket expenses.

(iv) After the above deductions, the manager, Kenya Commercial Bank, Kangari Branch be and is hereby ordered to deposit the total bank balances in the said account with the Registrar, High Court of Kenya at Nairobi with leave to the beneficiaries of the said estate of Karanja Mutegi alias Jackson Karanja Mutegi (Deceased) to apply release of the deposited amount of money after the issue of distribution of the estate is finalized.

(2) The Summons which was premised upon Section 74 of the Law of Succession Act, Order 43 Civil Procedure Rules, 2010 Rules (1), 49, 59(5) Rule 73 of Probate and Administration Rules Cap 160, Laws of Kenya and all other enabling provisions of law was supported by the Affidavit of even date sworn by the 1st Applicant.

(3) The 2nd Respondent DOUGLAS MWANGI KARANJA filed a Replying Affidavit dated 21st September 2020 opposing the Summons for Rectification of the Grant. Thereafter the 1st Applicant filed what he termed a 'Responding Affidavit' dated 7th October 2020 as well as a Further Affidavit dated 30th March 2021.

(4) The Summons was canvassed by way of written submissions. The Applicant filed written submissions which were undated whilst the Objector/Respondent relied on the written submissions dated 20th April 2021.

BACKGROUND

(5) The matter before the Court relates to the estate of one KARANJA MUTEGI alias JACKSON KARANJA MUTEGI (hereinafter 'the Deceased') who died intestate on 14th October 2002. A Grant of Letters of Administration to the Estate of the Deceased was made to the widow JOINAH WAITHIRA KARANJA together with DOUGLAS MWANGI KARANJA (the 2nd Respondent), JOHN MUTHUMA KARANJA (the 1st Respondent) and BENSON NJIHIA KARANJA (the 1st Applicant) as Co-Administrators. Following the death of JOINAH WAITHIRA KARANJA the widow of the Deceased on 25th February 2015 she was removed as Administrator and the Grant was duly confirmed on 14th November 2018 in the names of the 1st Applicant together with the 1st and 2nd Respondents ONLY. From 2018 to date the estate has not been fully distributed due to disagreement and wrangles between the Administrators.

(6) In January 2019, the 1st Applicant went to the Murang'a Land Registry and registered the Certificate of Grant so as to facilitate the transfer of the properties known as Loc.2/Kinyona/354 and Loc.2/Kangari/764 from the name of the Deceased into the joint names of the three (3) Administrators. The 1st Applicant avers that he pursued the process of registration and the two parcels of land were duly transferred into the names of the three (3) Administrators. They then needed to obtain consent from the Land Control Board before the land could be subdivided and transferred into the names of the individual beneficiaries.

(7) That the parties engaged a Surveyor known as Joseph M. Githii T/A Development Survey Services to carry out the subdivision into fifteen (15) pieces as stipulated in the Confirmed Grant. The 1st Applicant averred that the Surveyor did a survey check of the size of their late parents' homestead which also covers their graves and was supposed to be shared by Douglas Mwangi Karanja, Virginiah Nyambura Rugano, Ellen Wanjiku Mbatia, John Muthuma Karanja, Benson Njihia Karanja, Racheal Wanjiru Kamiri, Ruth Wambui Ndungu and Milkah Njeri Karanja who are the beneficiaries of the Deceased's Estate. The Surveyor found the actual size of the land to be 0.10Ha. (0.247 acre) and not 0.135 acre as indicated in the Certificate of Confirmation of Grant. For this reason the 1st Applicant seeks to have the Grant rectified to correspond with the findings of the Surveyor.

(8) The 1st Applicant further states that in order to complete the subdivision process the Administrators are required to pay a sum of Kshs. 45,000/- as levy to the Murang'a County Government and Kshs. 170,000/- to the Surveyor. He seeks to have these funds taken out of a Bank Account No. 1107018994 held in the name of the Deceased held at Kenya Commercial Bank, Kangari Branch which account according to the 1st Applicant has a balance of Kshs. 486,000/- which is more than sufficient to cater for the required payments.

(9) Finally the 1st Applicant avers that the name of one of the beneficiaries of the Deceaseds estate was erroneously indicated on the Grant as SAMMY KARANJA instead of his correct full names being SAMMY KARANJA KAMIRI. For the above reasons the 1st Applicant prays that the Grant be rectified as prayed.

(10) The application to rectify the Grant was opposed by the Respondents. The 2nd Respondent in his Replying Affidavit dated 21st

September 2020 avers that the Administrators have prudently managed the estate of the Deceased. That the Administrators are united save for the 1st Applicant who is accused of self-dealing and failing to co-operate with the other Administrators in the management and distribution of the estate. According to the Respondents no substantive relevant and / or cogent material has been adduced to warrant the Rectification of the Grant.

ANALYSIS AND DETERMINATION

(11) I have carefully considered this Summons for Rectification of Grant, the Affidavits filed in Reply thereto as well as the written submissions filed by the parties. **Section 74** of the **Law of Succession Act** provides for the circumstances under which a Grant may be rectified as follows:-

“Errors in names and descriptions, or in setting out the time and place of the Deceased’s death, or the purpose in a Limited Grant, may be rectified by the Court and the Grant of representation, whether before or after Confirmation, may be altered and amended accordingly.”

(12) This **Section** therefore provides that a Grant may be ‘**rectified**’ where the same contains ‘**errors**’ in names or in description. **Rule 43** of the **Probate and Administration Rules** which provides for the procedure to be followed in rectifying a Grant after issuance states as follows:-

“Where the holder of a Grant seeks pursuant to the provisions of Section 74 of the Act rectification of an error in the Grant as to the names or description of any person or thing or as to the time or place of the death of the Deceased or, in the case of a Limited Grant, the purpose for which the Grant was made, he shall apply by Summons in Form 110 for such rectification through the registry and in the cause in which the Grant was issued.”

(13) The 1st Applicant herein has sought to have the Confirmed Grant issued on **14th November 2018** rectified on two main grounds:-

- (i) **To rectify an error in the name of one of the beneficiaries to the estate.**
 - (ii) **To rectify the description of an Asset of the estate based on the Surveyors Report.**
- (i) **Name of the Beneficiary**

(14) According to the 1st Applicant one of the beneficiaries of the estate of the Deceased was erroneously listed as ‘**Sammy Karanja**’ whilst his full names ought to correctly read **Sammy Karanja Kamiri**. A rectification of this type is permitted by **Section 74** which allows for Rectification of a Grant as a means to correct errors in names.

(15) However in opposing the Summons the Respondents allege that the said **Sammy Karanja Kamiri** is **not** a beneficiary of the Estate of the Deceased. That this is in actual fact a scheme by the 1st Applicant who is an Administrator of the estate to bring his own nephew into the estate as a beneficiary. The Respondents categorically deny the Applicants claim that this **Sammy Karanja** was inadvertently omitted from the list of beneficiaries or that his name was wrongly listed.

(16) A perusal of the original Petition for Letters of Administration in respect of the estate of the Deceased dated **19th December 2002**, reveals that the name of **Sammy Karanja** is **not** included as one of the beneficiaries to the estate. Likewise the Chiefs letter which accompanied the application did not include the name of **Sammy Karanja** as a beneficiary. Similarly the Affidavit in Support of the Summons for Confirmation of Grant dated **22nd October 2018** **does not** include the name of **Sammy Karanja** in paragraph (5) which lists the beneficiaries to the estate. This Affidavit was also signed by the 1st Applicant. Why did the 1st Applicant not at that stage take issue with exclusion of **Sammy Karanja**. He only raises the issue **after** the Grant has been confirmed.

(17) However the name of **Samuel Karanja** mysteriously appears as one of the beneficiaries in the Confirmed Grant dated **14th November 2018** (Annexure **BKN’1’** to the Supporting Affidavit dated **21st February 2020**). The beneficiaries **all** consented to the Confirmation of the Grant.

(18) It is not clear at what stage it was realized that **Samuel Karanja** was a beneficiary to the Deceased’s estate. His name appears to have been slipped in unprocedurally at the last minute during the process of Confirming the Grant. The position of **Samuel Karanja** is not clear. It is not clear in what capacity he appears to inherit the land of the Deceased. If the said **Samuel Karanja** is coming in to replace one of the children (beneficiaries) of the Deceased then a proper application must be made and the said **Samuel Karanja** must lay proper basis for his inclusion as a beneficiary.

(19) Furthermore I note that the 1st Applicant has failed to lay proper basis for the Rectification of the Grant due to an error in the name of this so-called beneficiary. All that has been shown to Court is a copy of National Identity Card **No. 23523625** (Annexure ‘**BNK 6**’) in the names **Sammy Karanja Kamiri**. No Affidavit sworn by the said **Samuel Karanja** has been annexed deponing that he is also known as **Samuel Karanja Kamiri**. The Court would also require a letter from the Chief confirming that the two are one and the same person. For this reason I find that no sufficient basis has been laid to warrant the rectification of the name of this beneficiary.

(ii) **Rectification of description of the land forming part of the Estate**

(20) The 1st Applicant claims that notwithstanding the Agreement and consent reached between the parties regarding the sub-division and

allocation of the two parcels of land namely **Loc.2/Kinyona/354** and **Loc.2/Kangari/2764** as stipulated in the Confirmed Grant issued on **14th November 2018**, it has now become necessary to rectify the Confirmed Grant. That the homestead of the Deceased which also includes the graves of the Deceased and his late wife was to be shared out amongst all the beneficiaries. However a Survey conducted by a **Mr. Githii** revealed that the actual size of the parcels of land is **0.10 hectares (0.247 acres)** and **not 0.135 acres** as stated in the Confirmed Grant. The 1st Applicant has annexed to his Supporting Affidavit a copy of the Surveyors Report (Annexure **BNK '6'**).

(21) The Respondents have opposed this claim and assert that the measurements of the parcels of land remain as stated in the Confirmed Grant. The 1st Respondent in his Further Affidavit dated **12th October 2020** insists that the Administrators have managed the estate of the Deceased prudently and claims that the 1st Applicant received a larger portion of the land (being **3.805 acres**) than any of the other beneficiaries.

(22) There is clearly no consensus on the actual size of the land which is to be subdivided between the beneficiaries. In any event going back to **Section 74** it refers to errors and misdescriptions, time and place of Deceaseds death. What the Applicant is proposing is a redistribution of the entire estate since the basis of Surveyors Report of the acreage of the land in question, the portion of land to be allocated to each beneficiary will of necessity have to change. **Section 74** is not available for purposes of redistribution of the entire estate.

(23) Similarly the proposal of the 1st Applicant to utilize the funds in the Deceaseds bank account to make payments to the County Government and to the Surveyor is objected to by the Respondents such an action would also amount to an entire redistribution of the estate contrary to what was agreed upon at the time of Confirmation of the Grant. In the Certificate of Confirmed Grant it was agreed that the balance in the said account would be distributed equally amongst **ALL** the beneficiaries. Therefore this proposal by the 1st Applicant also amounts to a redistribution of the entire estate.

(24) For the reasons above I find that this application seeking Rectification of Grant is misplaced. Rectification cannot be used to add to the beneficiaries of an estate and/or to redistribute the entire estate. What the 1st Applicant is seeking is an entire re-distribution of the estate and **not** mere rectification of errors. In the circumstances I find no merit in the Summons for Rectification of Grant. The same is dismissed in entirety with no orders on costs.

(25) Having said that this Court is however mindful of the fact that it is the legal duty of Administrators to distribute the estate of the Deceased to the named beneficiaries. It is clear that there is no meeting of minds between the Administrators of this estate. The question of the true acreage of land to be sub-divided remains contentious. In the circumstances and in order to move the matter forward I invoke the Courts powers under **Section 47** of the **Law of Succession Act** and direct that the Government Surveyor conduct a survey of the land in question and file in Court his Report. The costs for the Government Surveyor will be met by the estate of the Deceased. It is so ordered.

Dated in **Nairobi** this **18TH** day of **JUNE, 2021**.

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MAUREEN A. ODERO

JUDGE