



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 101 OF 1994**

**IN THE MATTER OF THE ESTATE OF THE LATE MARGARET CIAMBITHILI (DECEASED)**

**JACOB MUTURA.....PETITIONER**

**VERSUS**

**ANTONY MWANIKI.....APPLICANT**

**RULING**

1. The deceased died on 19<sup>th</sup> December 1993. Letters of Administration with respect to her estate were issued to the Petitioner and the grant was confirmed on 19<sup>th</sup> October 2010 in the following terms: -

***NGUSISHI SETTLEMENT SCHEME/408***

- |  |                          |
|--|--------------------------|
| <b><i>i) MUNENE M'THURANIRA</i></b>                | <b><i>2.00 acres</i></b> |
| <b><i>ii) FRANCIS NJIRU BENSON KARUNJIRA</i></b>   | <b><i>1.50 acres</i></b> |
| <b><i>iii) JOSEPH MUGAMBI MBAYA</i></b>            | <b><i>0.50 acres</i></b> |
| <b><i>iv) JACOB MURITHI</i></b>                    | <b><i>0.25 acres</i></b> |
| <b><i>v) JACOB MUTURA to hold in trust for</i></b> |                          |
| <b><i>SGM (a minor)</i></b>                        | <b><i>1.00 acres</i></b> |
| <b><i>vi) SERESTINO MURIUKI MURITHI</i></b>        | <b><i>0.38 acres</i></b> |
| <b><i>vii) JACOB MUTURA</i></b>                    | <b><i>Balance</i></b>    |

***The Application***

2. One of the beneficiaries, Francis Njiru Benson Karunjira died on 20<sup>th</sup> August 2007 before the grant was effected at the lands registry. The Applicant who is a son to the said Francis Njiru Benson Karunjira has brought the instant application dated 24<sup>th</sup> March 2021 seeking an order that the Court authorizes the Deputy Registrar to sign all the requisite documents to effect transfer on behalf of the Petitioner.

3. The Applicant urges that the Petitioner/Administrator has refused/ignored to sign the necessary documents to effect the transfer and that it is hard to trace him. He urges that the grant was confirmed way back in 2010 and up to date, the beneficiaries have not received their shares and that some of the beneficiaries have already died without getting their shares.

4. In his supporting affidavit he also urges that his father's share measuring 1.50 acres be registered under his name instead of his late father's name. In his further affidavit sworn on 23<sup>rd</sup> September 2021, he urges that after the death of his father, he filed a succession cause and was issued with a grant. He urges that before the demise of his father, he bought a portion of land from Francis Mwithu M'Mainya which was registered in the name of Margaret Ciobaithili Mainya, the mother to the vendor. He urges that since the registered owner was deceased, one of her sons, Jacob Mutura filed the succession cause and was issued with a grant and the same was confirmed, listing his late father as one of the beneficiaries. He urges that the said land was surveyed and the mutation form was drawn whereby his father was given Ngusishi Settlement Scheme/2399 which portion was to be transferred to his late father. He urges that since his father passed on before his portion was

transferred to him, he is claiming the said portion.

### ***Determination***

5. The present application seeks for an order that the Deputy Registrar to executes the forms necessary for implementing the grant, on the grounds that the Petitioner who is the Administrator has failed in his duty. The Applicant also seeks to have the portion of land of his late father be given to him since his father is now deceased. This is in effect a prayer for rectification of grant to substitute the name of Francis (his late father) with that of the Applicant.

6. The Court observes that there is an ongoing succession cause on behalf of the said Francis Njiru Benson Karunjira. This Court is of the view that since it is not privy to the mode of distribution in the grant (if any) with respect to the late Francis Njiru Benson Karunjira, the property cannot be rightfully transferred to the Applicant. The Court appreciates that the Applicant is a son to the deceased Francis and is indeed a rightful heir to the said Francis. This Court is however alive to the fact that the Applicant might not be the only heir. The Court observes that in a previous application which was not prosecuted, there is mention of other beneficiaries to the estate of Francis.

7. This Court, therefore, finds that the interests of justice demand that the entire portion be brought to the attention of the Court in the succession cause with respect to the late Francis' estate. It is for that Court to determine how the portion allocated to Francis will be shared amongst his dependants. This Court will thus rectify the grant to reflect Francis' estate.

8. With respect to the prayer to have the Deputy Registrar execute all forms, this Court finds this prayer to be merited. This is heightened by the fact that despite proper service on four occasions, the Petitioner and Administrator has failed to attend Court for hearing of the instant application.

### ***Conclusion***

9. The application before this Court seeks to have the Deputy Registrar be ordered to execute the forms necessary to implement the grant. The basis for this prayer is that the Administrator has failed in his legal duty to attend to implementation of the grant. The Court observes that the grant was confirmed on 19<sup>th</sup> October 2010, over 10 years ago. It is thus clear that the Administrator has failed in his duty and may not even intend to honour his duty to the Court and to other beneficiaries. Despite proper service, the said Administrator failed to attend Court for hearing of the instant application. The Court thus finds this prayer merited.

10. The application also seeks to substitute the name of one of the beneficiaries with that of the Applicant, his son, on the ground that the beneficiary is deceased. The Court has confirmed from the documents in support of this prayer that there is indeed a pending succession cause with respect to the estate of Francis Njiru Benson Karunjira, the said deceased beneficiary. This Court however considers that there may be other beneficiaries who are equally entitled to shares on the portion allocated to the deceased beneficiary. This Court will therefore decline to transfer the share to the Applicant but will instead transfer the share to the estate of the deceased beneficiary. This will allow for this property to be brought to the attention of the Court before which the succession cause with respect to the estate of the deceased beneficiary has been filed. The said Court will then consider this as one of the assets belonging to the deceased beneficiary and order for its distribution appropriately.

### **ORDERS**

11. Accordingly, for the reasons set above, this Court makes the following orders: -

*i) The Applicant's application for rectification of grant dated 24<sup>th</sup> March 2021 is allowed to the extent that the Deputy Registrar is hereby ordered to execute all the necessary documents to implement the grant herein.*

*ii) The grant is rectified to replace the name of 'Francis Njiru Benson Karunjira' with 'The Estate of Francis Njiru Benson Karunjira'*

*iii) This being a family matter there shall be no order as to costs.*

Order accordingly.

**DATED AND DELIVERED ON THIS 14<sup>TH</sup> DAY OF OCTOBER, 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances**

**Antony Mwaniki Njiru, the Applicant in person.**