



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO.62 OF 2000**

**IN THE MATTER OF THE ESTATE OF:**

**PAULO FESTO AMUKOWA ..... DECEASED**

**BETWEEN**

**MILKA NABWIRE AMUKOWA.....1<sup>ST</sup> PETITIONER/APPLICANT**

**AND**

**COLLINS ONYANGO AMUKOA .....2<sup>ND</sup> PETITIONER/RESPONDENT**

**SYLVANUS AMUKHALE AMUKOA..... 1<sup>ST</sup> BENEFICIARY /RESPONDENT**

**MARYDINA NAMUKURU AMUKOA ..... 2<sup>ND</sup> BENEFICIARY /RESPONDENT**

**STEPHEN OMBUNE AMUKOWA ..... 3<sup>RD</sup> BENEFICIARY /RESPONDENT**

**RULING**

1. The applicant herein, is seeking orders for rectification of the grant that was confirmed on 27<sup>th</sup> March 2012. Her application dated 27<sup>th</sup> November 2015 is premised on the following grounds:

- a) That the applicant who is sickly and in need of care has been forced out of her own property jointly owned by [sic]the 3<sup>rd</sup> and the 4<sup>th</sup> beneficiary/ respondent [sic] by the respondents.
- b)The respondents intends to dispose of the said applicant's property jointly owned LR No. SOUTH TESO/ANGOROMO/1854 unless orders sought herein are granted.
- c) The said L.R. SOUTH TESO/ANGOROMO/1854 forms the deceased homestead and the same will be disposed of if the sought herein are not granted.
- d) The entire deceased's estate is not ancestral land but a product of hard work from applicant and her late husband the deceased, hence the respondents have no right to dispose as they please.
- e) The respondents who have ready been given their share of estate will not be prejudiced if orders sought herein are granted.

2. The application was opposed on the following grounds:

- a) That the application is unmeritorious since the grant has been confirmed and implemented on the ground.
- b) That the applicant intends to dispose of the land parcel No. SOUTH TESO/ANGOROMO/1854 jointly owned and where the homesteads of all the respondents are.

3. Both parties filed written submissions.

4. Upon my perusal of the supporting and replying affidavits, the submissions of the applicants as well as the record, the following facts emerge:

a) That after the confirmation of the grant on 27<sup>th</sup> March 2012 accounts have not been rendered.

b) The applicant herein was the petitioner and it was her proposal that was confirmed. Unless the court has been shown that a genuine mistake existed, rectification cannot be made.

c) In the instant case no mistake has been pleaded or shown to have existed.

5. The application therefore has no merit. The same is dismissed.

6. I make an order that the applicant /petitioner to render accounts within 60 days.

7. Each party to meet own costs.

**DELIVERED and SIGNED at BUSIA this 15<sup>th</sup> day of July, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**