



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 569 OF 2006

IN THE MATTER OF THE ESTATE OF NJERU MBIRI ALIAS NJEGA MBIRI (DECEASED)

PATRICK KIURA NJERU.....1ST APPLICANT

DAVID NJURURI NJERU.....2ND APPLICANT

R U L I N G

A. Introduction

1. This is a ruling for summons for rectification of grant of representation dated 25th October 2018.
2. The application is brought by applicants who are beneficiaries to the deceased's estate seeking rectification to the effect that the 1st applicant be allocated land parcel no. Ngandori/Kirigi/7029 and the 2nd applicant be authorized to retain land parcel no Ngandori/Kirigi/7028 which he has been using and has developed long before the grant was confirmed.
3. The summons is not opposed.

B. Applicants' Case

4. It was the applicant's case that the 1st applicant had earlier applied for transfer of parcel no. Ngandori/Kirigi/7029 to the 2nd applicant unsuccessfully because the grant did not support the exchange with Ngandori/Kirigi/7028.
5. The applicants further deponed that the 2nd applicant had already possessed land parcel No. Ngandori/Kirigi/7028, has partitioned and disposed it of the resultant parcels.
6. The applicants were thus in agreement that the only parcel left was land parcel No. Ngandori/Kirigi/7029 and that it ought to be given to the 1st applicant as his inheritance in the estate because the other two beneficiaries have already taken their shares.

C. The Determination

7. **Section 74** provides for the errors on grants of representation that may be rectified by the court. It provides:

“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”.

8. The procedure for seeking the relief is set out in **Rule 43 (1)**, which echoes **Section 74 of the Law of Succession Act**.

9. **Rule 34(1)** says: -

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 descriptions 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.

10. The provisions in **Section 74** and **Rule 43** are extremely restricted. They permit rectification of grants in three clearly defined cases: -

(a) errors in names and descriptions of persons or things;

(b) errors as to time or place of death of the deceased;

(c) in cases of a limited grant, the purpose for which such limited is made;

11. The grant which was confirmed on 19/07/2018 distributed the deceased's asset **LR. No. Ngandori/Kirigi/1963** in equal shares to the three beneficiaries. Upon sub-division, the shares are as follows: -

- i. Madrine Gicugu Ileri LR. 7030 0.32 HA**
- ii. Patrick Kiura Njeru LR. 7031 0.44 HA**
- iii. David Njururi Njeru LR. 7032 0.40 HA**

12. The 2nd parcel Ngandori/Kirigi/1618 was shared in three equal shares between the beneficiaries. It was subdivided and allocated as follows: -

- i. Madrine Gicugu Ileri - LR. Ngandori/Kirigi/7027**
- ii. Patrick Kiura Njeru - LR. Ngandori/Kirigi/7028**
- iii. David Njururi Njeru - LR. Ngandori/Kirigi/7029**

13. The beneficiaries were getting equal shares but had already occupied and developed their portions before the grant was issued. The administrator who applied for confirmation of grant seems to have made an error and exchanged the numbers of the shares of the applicants. The District Surveyor has filed a report dated 16th January 2017 explaining the error and giving proposals on how it can be rectified.

14. This is an error rectifiable under Section 74 of the Act. It is noted that the shares of the beneficiaries still remain the same as per the grant and will not be affected by the rectification. The rectification will only facilitate the applicants to occupy the parcels they have been using and have them registered in their names. The error did not affect Madrine Gicugu Ileri.

15. I find that the application for rectification is meritorious and allow as prayed bearing in mind that sub-division has already taken place. The grant will be rectified as follows: -

- i. LR. Ngandori/Kirigi/7027 - Madrin Gicugu Ileri**
- ii. LR. Ngandori/Kirigi/7028 - Patrick Kiura Njeru**
- iii. LR. Ngandori/Kirigi/7029 - David Njururi Njeru**
- iv. LR. Ngandori/Kirigi/7030 - Madrine Gicugu Ileri**
- v. LR. Ngandori/Kirigi/7031 - Patrick Kiura Njeru**
- vi. LR. Ngandori/Kirigi/7032 - David Njururi Njeru**

16. In its ruling delivered on .. this court had authorised the Deputy Registrar to execute the necessary documents in place of the administrator Madrin Gicugu. The order still is still valid and will assist the applicants in executing the amended grant.

17. An amended grant to issue.

18. Each party to meet their own costs of this application.

19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF JANUARY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Bot applicants