



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

P&A CASE NO.983 OF 2014

IN THE MATTER OF THE ESTATE OF ANDREW KAMAU KINYA

alias ANDREW KAMAU alias ANDREW KAMAU KINYUA

AND

IN THE MATTER OF AN APPLICATION BY

MARY WANJIRU GITAU.....PETITIONER

RULING

On 13th July 2016 a certificate of confirmation of grant was issued to Mary Wanjiru Gitau to Estate of Andrew Kamau Kinya alias Andrew Kamau alias Andrew Kamau Kinyua.

The estate **Tetu/Kiriti/741** was distributed as follows:-

MARY WANJIRU GITAU.....

MARTHA NGIMA WAMAE.....

AGNES WANJIKU WAMBUGU.....

ANGELINA NYACHINGA KAMAU.....0.8319 ACRES TO HOLD IN COMMON

SIMON NDUNG'U KAMAU.....0.8319 ACRES

SAMEUL KAMONDO.....0.8319 ACRES

On 30th July 2018 the administrator filed summons for Rectification of grant seeking orders:-

a. *That the grant of letters of Administration issued to Mary Wanjiru Gitau on 13th July, 2016 be rectified.*

b. *That the land parcel Tetu/Kiriti/741 mentioned in form P&A 5 be rectified/amended to read TETU/KIRITI/916, TETU/KIRITI/917 and TETU/KIRITI/918 being subdivision from TETU/KIRITI/741 and all in the name of the deceased.*

c. *That the grant issued to Mary Wanjiru Gitau on 15th July, 2016 be amended and or rectified to provide for the mentioned parcels of land as indicated in prayer (b) above.*

d. *That the cost of this Application be in the cause.*

The SG is supported by her affidavit sworn on 30th May, 2018 and supporting affidavit sworn on 24th January 2019.

The summons is erroneously brought under Rule 44 (1) of the P&A rules which provide for revocation of grant instead of 43(1) despite the fact that the applicant seeks orders to amend/rectify the grant.

The reason for this application is because at the filing of the cause the applicant was not aware that the deceased had subdivided his land into

three parcels from TETU/KIRITI/741 to TETU/KIRITI/916,917 & 918 and hence even the P&A 5 did not reflect these LR numbers.

From the affidavits apart from inserting the correct L.R numbers of the deceased's estate in P&A 5, the mode of distribution will also change as set out in paragraphs 6,7,8 and 9 of the supporting affidavit.

The only question to be answered from all these is whether the above can be described as a correction of errors in the description of the deceased's estate, names etc as provided for under rule 43 (1) of the P&A Rules? The Rule states;

Rectification of grant

*(1) 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. (emphasis added)*

It is clear that the deceased did not own any estate in the name of LR TETU/KIRITI/741 because it did not exist as at the time of his death. What existed was TETU/KIRITI/916,917,918 hence it is not correct to state that this is merely a correction of the description of a thing i.e. the deceased's estate.

The three parcels are different sizes – one being 0.8217 acres, the other 2 being 0.8466 acres hence even the shares of the each beneficiary will change.

The applicant ought to have sought a review of the orders granted in the cause, or revocation of the grant and the issuance of a new one with the correct position reflected in it. **See Re Estate of George Ragui Karanja (2016) eKLR and Re Estate of Charles Kibe Karanja (2015) eKLR**

Having said so, I find that under Section 73 of the P&A rules, this court is granted inherit powers to act in the interests of justice.

Taking into consideration the circumstances of this case, and the fact the only major change is the discovery that number 741 did not exist and that no new beneficiaries, properties are being added, I will consider this application as a review of the orders granted at the time of issuing the grant, and certificate of confirmation of grant.

Secondly all the beneficiaries have consented to the changes vide the consent signed on 30th May 2018 and filed on 30th July 2018.

The following orders to issue:-

The orders issued on 13th July 2016 are reviewed in the following terms:-

- 1) Form P&A dated 23rd September 2014 is amended to read in the assets section LR Tetu/Kiriti/ 916,917 and 918.
- 2) The certificate of confirmation of grant be reviewed accordingly to reflection the distribution set out at paragraph 6,7,8 and 9 of the affidavit sworn on 24th January 2019 viz:

NAME	PROPERTY	SHARE OF HEIRS
MARY WANJIRU GITAU	TETU KIRITI/916	
MARTHA NGINA WAMAE		EQUAL SHARES
AGNES WANJIKU WAMBUGU		
ANGELINA NYACHINGA KAMAU		
SIMON NDUNG'U KAMAU	TETU /KIRITI/917	WHOLE SHARE
SAMUEL KIMONDO	TETU/KIRITI/918	WHOLE SHARE
SIMON NDUNG'U KAMAU	MURANGA/ITHANGA/	EQUAL

	PHASE IV 9	SHARES
SAMUEL KIMONDO		

3) No orders as to costs.

Dated, delivered and signed at Nyeri this 5th Day of February 2019.

Mumbua T.Matheka

Judge

In the presence of:

Ms. Juliet-Court Assistant

Mr. Gichuki for Applicants

Mumbua T.Matheka

Judge

5/2/19