



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.1972 OF 2002**

**IN THE MATTER OF THE ESTATE OF REGINA WANJIRU WERU - DECEASED**

**CATHERINE WAITHIRA MUNENE.....3<sup>RD</sup> ADMINISTRATRIX/APPLICANT**

**-VERSUS**

**VIOLET WAMAITHA WERU.....1<sup>ST</sup> ADMINISTRATRIX/RESPONDENT**

**SAMUEL KARIUKI.....2<sup>ND</sup> ADMINISTRATRIX/RESPONDENT**

**RULING**

1. There are two applications coming for consideration in this Ruling as follows:

- (i) The Administrator's Notice of Motion dated 22.11.2018.
- (ii) The summon for Rectification dated 22.11.2018

2. The Notice of Motion dated 26/11/2018 is seeking the following orders;

- (i) THAT the Honorable Court be pleased to review the Ruling and subsequent orders of the Hon. Lady Justice R. Ougo dated 3<sup>rd</sup> November, 2016 disallowing the application for revocation of grant issued to Violet Wamaitha Weru.
- (ii) THAT the Honorable Court be pleased to review the Ruling and subsequent orders of the Hon. Lady Justice R. Ougo dated 3<sup>rd</sup> November, 2016 disallowing the remaining Administrators namely Catherine Waithira Weru and Stephen Kariuki Weru to complete the Administration of the Estate.
- (iii) THAT the Honorable Court be pleased to review the orders of the Court issued on 2<sup>nd</sup> May, 2006 to include Land Title Number Loc 2/MAIRI/T.92 in the Certificate of Confirmation of Grant dated 2<sup>nd</sup> May 2006.
- (iv) THAT the Honourable Court be pleased to review the Orders of the Court issued on 2<sup>nd</sup> May 2006 and allocate Land Title Number Loc. Mairi T.92 to Jane N. Weru;
- (v) THAT Costs of this Application be provided for.

3. The Application dated 26.11.2018 is based on the following grounds:

- (i) That the land Title Number LOC.2/MAIRI/T.92 was erroneously omitted from the Certificate of Confirmation of Grant.
- (ii) The Beneficiaries had mutually agreed that the said land Title Number LOC.2/MAIRI/T.92 was to be allocated to Jane Njeri Weru.
- (iii) That the Applicant had notified the Respondents of the said error in the certificate of confirmation of grant vide a letter dated 9<sup>th</sup> July, 2009 to the 1<sup>st</sup> Administratrix/Respondent's then Advocates on record.
- (iv) That the grant was confirmed on 2<sup>nd</sup> May, 2006 and to date the estate has not been distributed to the respective beneficiaries.

(v) That the whereabouts of Violet Wamaitha Weru are unknown and efforts to trace her physical whereabouts have proved futile.

(vi) That the distribution of the estate stalled due to the unavailability, refusal and actions/inaction of the 1<sup>st</sup> Administratrix/Respondent, Violet Wamaitha Weru who refused to sign the transfer documents and to provide relevant completion documents.

(vii) The estate shall be effectively administered and distributed fully if Violet Wamaitha Weru's grant is revoked and the court allows the remaining administrators to finalise distribution.

(viii) That no prejudice shall be occasioned to any beneficiary.

4. The Summons for rectification of grant dated 22.11.2018 is also seeking the following orders;

**(I) THAT** the Honourable Court be pleased to rectify an error in the name of the 3<sup>rd</sup> Administrator in the Certificate of Confirmation of Grant dated 2<sup>nd</sup> May, 2006 that reads as either CATHERINE WAITHERA or CATHERINE W. MUNENE to instead read as; CATHERINE WAITHIRA MUNENE.

**(II) THAT** the Honourable Court be pleased to rectify the name of the beneficiary by the name JANE N. WERU in the Certificate of Confirmation of grant dated 2<sup>nd</sup> May, 2006 to instead read as; JANE NJERI KINYANJUI.

**(III) THAT** costs of this application be provided for.

5. The Summons is based on the following grounds;

(ix) The 3<sup>rd</sup> Administrator's names as they appear in her Identity Card Number [xxxx] are Catherine Waithira Munene. The Certificate of Confirmation of Grant erroneously records her name as either Catherine W. Munene or Catherine Waithera.

(x) The beneficiary by the name Jane N. Weru has since married and adopted her husband's name "Kinyanjui". Thus, she goes by the name Jane Njeri Kinyanjui as per her Identity Card Number [xxxx].

(xi) That Jane N. Weru was issued with a Certificate of Marriage No. [xxxx] after registration of her marriage under customary law.

(xii) The grounds for rectification have been fully established.

(xiii) That no prejudice shall be occasioned to any beneficiary

6. The Applicant's Counsel filed submissions herein as follows;

(i) That the Distribution of the Estate herein stalled due to the unavailability, refusal and actions/inactions of the 1<sup>st</sup> Administrator/Respondent VIOLET WAMAITHA WERU who refused to sign the transfer documents.

(ii) That the whereabouts of the said VIOLET WAMAITHA WERU are unknown and efforts to trace her physical whereabouts have proved futile.

(iii) That the Application which was seeking to revoke the grant issued to the said VIOLET WAMAITHA WERU was dismissed by the Court in a ruling delivered on 3.11.2016.

(iv) That the Applicant has exhausted pursuit of the 1<sup>st</sup> Administrator as an authorized signatory in matters concerning the estate before seeking the Court's permission for the 2<sup>nd</sup> and 3<sup>rd</sup> administrators to solely execute any transfer or document required to give effect to the certificate of grant dated 2.5.2006.

7. I have considered the submissions filed by the Applicant. I have also perused the file and I find the Court found that removing VIOLET WAMAITHA as a co-administrator would not solve the problems the administrators were facing. Both parties were given directions by the Court which have not been complied with.

8. When the Court gave directions on 3.11.2016, at paragraph 6 the Court considered a Replying Affidavit filed by VIOLET WAMAITHA WERU. The Applicant herein has submitted that the whereabouts of VIOLET WAMAITHA WERU is not known. However, there is no indication that her advocate has ceased to act for her. The firm of A. W. KINUTHIA & CO. ADVOCATES came on record for VIOLET WAMAITHA WERU on 13<sup>th</sup> September 2005 and there is no indication whether the said advocate is no longer available to act for the 1<sup>st</sup> administrator.

9. I find that there is no indication that the Applicant herein has attempted to comply with the directions of the Court issued on 3.11.2016. The matter was to be mentioned after 45 days to ensure compliance and for further orders.

10. There is no indication that there was any follow-up. An application for review can only be allowed if there is new evidence which was not in the knowledge of the Applicant at the time the order was made.

11. In the current case, the administrators were supposed to avail their identity cards and pins and original title deeds to their advocates. I find that the Application seeking review of the Court order is an attempt to run away from the obligation imposed by the Court.

12. The allegation that the 1<sup>st</sup> administrator is missing has not been supported by any evidence. There is no indication that a report has been made to the Police about a missing person. The application to review of the orders made on 3.11.2016 is rejected and the Applicant directed to comply with the Court Order.

13. However, prayers 3 and 4 of the Application dated 26/11/2018 are allowed and the application dated 22/11/2018 is also allowed. For avoidance of doubt this Court orders as follows:

(i) Prayers 1 and 2 of the Application dated 26/11/2018 seeking review of the orders issued on 3.11.2016 are disallowed.

(ii) Prayer 3 of the said Application dated 26/11/2018 is allowed and the Court directs that the grant issued on 2.5.2006 be amended to include Land Title No. LOC 2/MAIRI/T 92 in the amended Certificate of confirmation .

(iii) Prayer 4 of the Application dated 26.11.2018 is also allowed and the said Parcel Land tile no. LOC 2/MAIRI/T 92 be and is hereby allocated to JANE N. WERU.

14. The summons for rectification of grant dated 22.11.2018 is also allowed in the following terms:

(i) THAT the error in the name of the 3<sup>rd</sup> Administrator in the Certificate of confirmation dated 2.5.2006 which reads CATHERINE WAITHERA or CATHERINE W. MUNENE to be rectified to read CATHERNE WAITHIRA MUNENE.

(ii) THAT the beneficiary by the name JANE N. WERU in the Certificate of grant dated 2.5.2006 to be amended to read JANE NJERI KINYANJUI.

15. This is a family matter and each party to bear their own Costs of the Applications.

16. The parties are directed to mention the matter after 45 days to confirm compliance with the orders issued on 3<sup>rd</sup> November, 2016.

Orders to issue accordingly.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI**