



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 158 OF 2000

IN THE MATTER OF THE ESTATE OF JOHNSON MWITI M'IKANDI (DECEASED)

GEORGE MURITHI MWITI.....PETITIONER

RULING

1. Before me is a Summons for the rectification of the grant issued to **Teresa Kamathi** and which was confirmed on 1st March, 2010. The application is supported by the affidavit of **George Murithi Mwiti** sworn on 17th October, 2018.

2. The applicant stated that the grant was issued to the said **Teresia Kamathi** but she has since passed on. That the deceased was survived by **Joshua Kaimenyi Mwiti (son – deceased)**, **Jane Kagwiria Mwiti (daughter)** and **Evangeline Karimi Mwiti (deceased)**. **George Murithi Mwiti (“the applicant”)** sought that the entire estate be distributed to him in the proposed rectification.

3. When the matter came up for hearing on 17th December, 2018, the applicant told the court that the original petitioner **Teresia Kamathi** died in 2003 before effecting the distribution; that his brother **Joshua Kaimenyi Mwiti** had also died after confirmation and had left behind a widow, **Eunice Kananu** with a daughter Elosy Karambu. He also indicated that the distribution had left out **Nyaki/Mulathankari/481** and he sought to have it included in the rectification.

4. I have considered the application and the representations made by the applicant. It is clear from death certificate B No.731080 dated 26th June, 2003, that the original petitioner passed away on 25th June, 2003. That **Joshua Kaimenyi Mwiti** also died on 27th May, 2006 in terms of the death certificate No. 152846 dated 6th August, 2018.

5. The record also shows that **Evangeline Karimi Mwiti** died on 15th June, 2011 vide death certificate no. 154871 dated 29th March, 2012.

6. In this regard, out of the five people who had survived the deceased in this matter as stated in the Chief’s letter of introduction dated 23rd May, 2000, only the applicant was still alive. The applicant however, indicated that **Joshua Kaimenyi Mwiti** was survived by a widow by the name **Eunice Kananu** and she could take his share.

7. In view of the foregoing, I find the application to be meritorious. I substitute the administrator with the applicant **George Murithi Mwiti**. As regards distribution of the estate, the aforesaid **Eunice Kananu** is entitled to the share of her deceased husband. The applicant has no right to inherit his brother’s share.

8. The other issue is the applicant’s inclusion of **parcel no. Nyaki/Mulathankari/481** as part of the deceased’s estate. According to the certificate of search dated 18th December, 2018, the said property is registered in the name of **Peter Ikandi Twankure** and not the deceased. Accordingly, that property is not part of the estate and is therefore not available for distribution.

9. Accordingly, the application is hereby allowed. The certificate of confirmation of grant is therefore rectified as follows:-

a) the grant issued to **Teresa Kamathi Mwiti** is hereby revoked.

b) a fresh grant hereby issues to **George Murithi Mwiti**.

c) The certificate of confirmation issued on 6th March, 2002 is hereby rectified as follows: -

Nyaki/Giaki/386

i) Eunice Kananu Mukumu - 10 acres

ii) George Murithi Mwiti - Balance

10. There will be no order as to costs.

DATED and **DELIVERED** at Meru this 5th day of March, 2019.

A. MABEYA

JUDGE