



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO 381 OF 2002**  
**IN THE MATTER OF THE ESTATE OF THE LATE VERONICAH WANJIRU KARIUKI (DECEASED)**

**JACINTA WAIHERA KARIUKI.....APPLICANT**

**VERSUS**

**JOSEPH KOIGI MWANGI.....RESPONDENT**

**JUDGEMENT**

1. The Chamber Summons before court is dated 9/7/18 and it seeks orders;

1. Spent

2. Spent

3. **THAT** the grant of letter of administrator issued to Jacinta Waithera Kariuki on 7/12/2002 and confirmed on 14/12/2007 be rectified.

4. **THAT** the costs of this application be in the cause.

2. The same is anchored on the affidavit of Jacinta Waithera Kariuki and on grounds;

a. **THAT** the respondent Joseph Koigi Mwangi is an in law to the applicant.

b. **THAT** the respondent in spite of a subdivision having not been done seems to be forcing himself on the parcel of land in question.

c. **THAT** it has now clearly emerged that the respondent "purchased" some parcel of land from his father in law which purchase never existed at all.

d. **THAT** instead of criminalizing the whole issue it will be prudent for the respondent to step aside.

e. **THAT** the respondent appears to be impliedly evicting a legal purchase of land from the estate without necessarily consulting the estates children

3. The application is opposed and in a replying affidavit Joseph Koigi Mwangi (respondent) has stated that the deceased was his mother in law. His wife was a sister to the applicant.

4. It is the respondents' case that he was included as a beneficiary in the estate of his mother in law. This was to ensure that his (respondent's) family inherited what would have been inherited by the respondent's wife. The grant was confirmed with consent of all the parties.

5. He denies any fraudulent purchase of land for the father of the applicant. He adds that the portion that was to go to his family out of property Elburgon/Turi Block 3/54 has already been sold to a 3<sup>rd</sup> party by the applicant. All other beneficiaries have been settled on their portions.

6. The matter was heard through oral evidence. The applicant stated that the respondent was husband to Nancy Njeri, the applicant's sister. The respondent had found the said Nancy Njeri (deceased) with a business knitting and selling clothes. She added that it was the respondent who was guiding her during the filing of the succession cause. The respondent was listed as a beneficiary to represent Nancy Njeri. The applicant adds that they came to realise that some properties of the deceased were not listed in the cause.
7. When cross examined by Mr Githui, the applicant confirmed that the process taken through the filing of the petition and the proposal for distribution was regular. She signed necessary papers including the form P & A 5, proposal on distribution and consent to confirmation of grant.
8. The applicant confirms that the grant was confirmed as per their proposals.
9. PW 2 told the court that he found it strange that the respondent as an in law was involved in the affairs of the estate herein.
10. The respondent relied entirely on the replying affidavit on record and both parties have filed written submissions.
11. I have considered the application, the oral evidence on record as well as the affidavit evidence. I have had due regard to the submissions on record.
12. The documentation all the way from the filing of the petition to the confirmation of grant is on the face of the record regular.
13. The applicant seems to have changed her mind on the inclusion of the respondent as a beneficiary when, it is alleged, the family came to learn that the respondent had fraudulently bought land from the applicant's father.
14. It is quite apt when the applicant states in submissions that, "the issue will be addressed in a different forum of the land court to be exact"(sic).
15. Neither PW 1 nor PW 2 have laid any plausible ground on the basis of which the order of court as embodied in the certificate of confirmed grant should be disturbed.
16. It is not possibly true that the respondent sneaked his name as a beneficiary in the estate herein as in documents signed by the applicant, the respondent was included as a beneficiary at inception all the way to the confirmation of grant and the intention is quite clear that he was to represent the family of his deceased wife Nancy Njeri who had a right to inherit from the estate.
17. The only anomaly that catches the eye of the court is that the share going to the respondent from the certificate of confirmed grant is an absolute ownership of 1.5 acres out of the estate. Had the applicant moved the court to have the inheritance of the children of Nancy Njeri protected by ensuring that the respondent did not gain absolute ownership of the inheritance, that would be an arguable case given that it is clear that any property he would get ought to be for his benefit and for the benefit of the children of Nancy Njeri.
18. The question that readily springs to mind is what errors the applicant intends to be rectified. She has not put forward any error(s) that are discernable from her evidence or the summons itself.
19. This court (Nyamweya J) had occasion to consider errors capable of rectification under Section 74 of the Law of Succession Act in the case of **John Nzunza Mbalu & Another –vs- Alice Nzisa Mbalu [2016] eKLR**. The court stated;  
  
**“ An error is essentially a mistake. For the purpose of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error” It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.”**
20. Clearly the prayer for rectification of grant put forth by the applicant fails to fit within the purview of Section 74 of the Act and Rule 43 of probate and administration rules. It is one set for failure at the outset.
21. As alluded to earlier, I have noted that the share of inheritance going to the respondent is 1.5 acres of land absolutely. This position is disturbing. As the order of court stands, the respondent will be free to deal with this inheritance in any manner he may deem fit unfettered.
22. This issue has pricked the court's sense of justice, and, while alive that there was no prayer in respect of this, and noting that the inclusion of the respondent as a beneficiary was solely to cater for the family of Nancy Njeri, I find it equitable and just that on the court's own motion the certificate of confirmed grant be amended to indicate that the share of 1.5 acres out of the estate is to be held by the respondent on his own behalf and in trust for the children of Nancy Njeri.
23. With the result that the Chamber Summons dated 9/7/18 fails and is dismissed. I make the following orders;

1. The summon dated 9/7/18 is dismissed.
2. Each party to bear its own costs.

3. The certificate of confirmed grant dated 14/12/07 be amended in so far as the share of Joseph Koigi is concerned to read 1.5 acres to hold on his own behalf and in trust for the children of Nancy Njeri.

4. Orders accordingly.

**Dated and Delivered at Nakuru this 12<sup>th</sup> day of June, 2019.**

**A. K. NDUNG'U**

**JUDGE**