



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 584 OF 2012

IN THE MATTER OF THE ESTATE OF NICHOLAS NYAMARI MATONDA (DECEASED)

BETWEEN

AGNES MORAA PETER..... PETITIONER

AND

ALOYS MOSIOMA NYAMARI..... RESPONDENT

RULING

1. The deceased, Nicholas Nyamari Matonda, died intestate on 12th March 2011. His daughter, Agnes Moraa Peter (herein “the petitioner”) sought letters of administration in his estate which were issued on 27th February 2012. The grant was confirmed on 8th December 2016 thereby conferring title of the entire land parcel Central Kitutu/Mwabundusi/96 to the petitioner.
2. Subsequently, the deceased’s son Alloys Mosioma Nyamari (herein “the objector”) filed an application for revocation of grant. D.S Majanja J. heard the application and allowed it in the following terms on 8th February 2019;
 - a) That the grant issued to Agnes Moraa Peter and duly confirmed on 8th December 2016 is hereby revoked;
 - b) A fresh grant shall issue to Agnes Moraa Peter and Alloys Mosioma Nyamari;
 - c) For the avoidance of doubt Central Kitutu/Mwabundusi/96 shall revert to the name of the deceased and the County land Registrar is directed to cancel all other entries on the register to comply with this order;
 - d) Either party shall be at liberty to apply for confirmation within 30 days;
 - e) There shall be no order as to costs.
3. Following an application for confirmation of grant by the petitioner dated 28th February 2019, the court ordered the County Surveyor, County Land Registrar and the Assistant County Commissioner to proceed to land parcel LR No. Central Kitutu/Mwabundusi/2907 and subdivide the land between Agnes Moraa, Alloys Mosioma and Peter Onger Charles who had purchased a portion of the deceased’s property. Agnes Moraa and Alloys Mosioma were to share the balance of the property equally after excluding the part occupied by Peter Onger Charles.
4. The County Surveyor visited the site on 15th May 2019 and prepared a report in which he observed that the purchaser, Peter Onger Charles had occupied and developed LR No. Central Kitutu/Mwabundusi/2908 rather than LR No. Central Kitutu/Mwabundusi/2907.
5. The petitioner made an application to this court vide a letter filed on 16th July, 2019 for rectification of the court’s orders issued on 1st July 2019. The parties were directed to file a certificate of search for the court to ascertain the identity of the parcel of land in order to rectify the orders.
6. Other than land parcel LR No. Central Kitutu/Mwabundusi/2907 the parties have not availed to court the official search certificates for the other subdivisions of the deceased’s land parcel Central Kitutu/Mwabundusi/96 to wit land parcel Central Kitutu/Mwabundusi/2392 and land parcel Central Kitutu/Mwabundusi/2908.
7. The petitioner is therefore directed to avail official search certificates for land parcel Central Kitutu/Mwabundusi/2392 and land parcel

Central Kitutu/Mwabundusi/2908 and any other subdivisions of land parcel Central Kitutu/Mwabundusi/96 to enable the court give further directions.

Dated and Delivered at Kisii this 16th day of October, 2019.

A.K NDUNG’U

JUDGE