



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 373 of 2014

IN THE MATTER OF THE ESTATE OF MUNYIRI GATIYA (DECEASED)

SAMUEL GATIA MUNYIRI.....PETITIONER/APPLICANT

RULING

On the 22nd September 2015, the certificate of confirmation of grant was issued by this court where the estate of the deceased, MUNYIRI GATIYA, composed of L.R KIRIMUKUYU/ GACHUIRO/259, was distributed, equally at 1.3 acres each, among the heirs listed as;

- a. SAMUEL GATIA MUNYIRI
- b. NYAMU MUNYIRI
- c. WERU MICHAEL MUCHIRI
- d. NYAMBURA KARIUKI

On the 14th September 2017, the administrator who is the applicant herein filed a summons for rectification of grant dated 8th September 2017. He seeks orders that the grant confirmed on the 22nd September 2015 be rectified so as to replace the name of MWERU MICHAEL MUCHIRI with that of AGNES NYACHOMBA MUCHIRI.

According to the supporting affidavit, the reason for this application is that the former passed away leaving behind the latter, her only daughter, and the family is in agreement that she should inherit what was due to her mother.

I have considered the application, and the supporting affidavit. I have also perused the court record.

There is annexed a certificate of death for Mweru Michael Muchiri, showing that she died on the 9th May 2017. There is a letter from the chief Ruthagati Location dated 14th August 2017 confirming the death, and that the deceased was survived by an only daughter, Anne Nyachomba Muchiri, and the consent signed by the other beneficiaries.

Strictly speaking, the orders sought cannot be granted under section 74 of the Law of Succession Act which provides for rectification of errors viz;

Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

Replacing the name of one beneficiary with that of another cannot be described as the rectification of an error. There was no error committed when the grant was confirmed. Weru Michael Muchiri was not wrongfully entered in the grant. She was a beneficiary of the estate of the deceased. It is apparent that all the applicant and the family want is the easiest way through which to transmit the estate without delay. And it is understandable.

According to the letter of the chief dated 24th April 2014 the applicant was 79 years, Nyambura Kariuki 65 years, the deceased was 77 years and died aged 80, another beneficiary Nyamu Munyiri was 55years old and passed on in 2015. Consequently, a summons for rectification was filed on the 11th January 2016 to replace him with his wife ALICE MWARANIA MUTHEE. The same was granted and a rectified grant issued on the 11th October 2016.

On the date of the hearing of this application, the applicant, and the other beneficiaries were present. The applicant told the court that, granted the orders, all he wanted was to complete the transmission of the estate.

In view of the foregoing, and in the interests of justice, I allow the application and order that the grant confirmed on the 22nd September 2015 and rectified on the 11th October 2016, be amended in the following terms; the name of Mweru Michael Muthee be replaced with that of Agnes Nyachomba Munyiri.

No orders as to costs.

Dated, delivered and signed this 2nd Day of February 2018 at Nyeri

TERESIA M MATHEKA

JUDGE