



**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO. 318 OF 2014**

**IN THE ESTATE OF: FRANCIS WAFULA OKULLO.....DECEASED**

**BETWEEN**

**MARY OKULLO.....PETITIONER/ RESPONDENT**

**AND**

**ELIZABETH LUCY MAYENDE.....INTERESTED PARTY**

**VERSUS**

**ROSELIDA NAMBIRO.....OBJECTOR /APPLICANT**

**RULING**

1. **ROSELIDA NAMBIRO**, the applicant herein filed an application dated 28<sup>th</sup> March 2015 for a review or setting aside of the grant issued herein on 15<sup>th</sup> December 2014. The application is brought under Order 45 Rule 1 of the Civil Procedure Rules and Rules 73 of the Probate and Administration Rules. It is premised on the following grounds:

a) That vide the certificate of confirmation of grant issued herein on 21<sup>st</sup> May 1996, Elizabeth Lucy Mayende was given a portion of L.R No. BUKHAYO/MUNDIKA/4153 measuring 6 acres.

b) That L.R.NO. BUKHAYO/MUNDIKA/4153 was consequently subdivided into L.R. NO. BUKHAYO/MUNDIKA/755,7556 and 7557.

c) That L.R. NO. BUKHAYO/MUNDIKA/7555 was registered in the name of the petitioner, L.R. NO. BUKHAYO/MUNDIKA/7556 was registered in the name of Elizabeth Mayende, L.R.NO. BUKHAYO/MUNDIKA/7557 was registered in the name of Shadrack Okulo Mayende while LR NOBUKHAYO/MUNDIKA/7557 was registered in the name of Shadrack Okulo.

d) That Elizabeth Mayende LR.NO.BUKHAYO/MUNDIKA/7556 to be sub divided into 3 portions namely BUKHAYO/MUNDIKA/7644 7645 and 7646.

e) That the said Elizabeth Lucy Mayende sold to the applicant LR NO. BUKHAYO/MUNDIKA/7664 and 7645 and the applicant has title to the said parcels of land and is in actual possession thereof.

f) That the petitioner has moved the court to rectify the grant with a view of reducing the share of Elizabeth Lucy Mayende to 3 acres and introducing Onesmas Wandera Munyende as holder of a portion measuring one acre out of LR NO. BUKHAYO/MUNDIKA/4153.

g) That there is an error apparent in the face of record as correction made did not relate to errors in names and descriptions or in setting out the time and place of the deceased's death or the purpose of a limited grant as envisaged under section 74 of the Law of Succession Act.

h) That Elizabeth Lucy Mayende having sold her entire entitlement to the applicant had nothing in her possession to surrender to the petitioner.

2. The application was opposed by MARY AKUKU OKULLO, the petitioner/respondent on the following grounds:

- a) That the applicant is a stranger to the estate of **FRANCIS WAFULA OKULLO**, her late deceased husband.
- b) That the applicant is not a beneficiary to the said estate.
- c) That the applicant was a purchaser from a beneficiary.

3. Even before we can embark in an exercise to establish whether the rectification was merited or not, we must first address the issue of *locus standi*, lest it be an exercise in futility. The applicant herein is a purchaser from a beneficiary. Since she is not a beneficiary in the estate of **FRANCIS WAFULA OKULLO**, she lacks capacity to move the court for orders in respect of the estate. The estate does not owe her any duty. If she has an issue to raise, she can only do so against the person who sold land to her. Section 2 (1) of the law of Succession Act provides as follows:

***Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.***

From the foregoing section, the interests of the applicant herein do fall under the ambit of the Law of Succession Act.

4. Having made a finding that the applicant lacks *locus standi* to make the application she has brought, I will not comment on its merits or otherwise for this will not add any value.

5. The application is therefore dismissed with costs.

**DELIVERED and SIGNED at BUSIA this 17<sup>th</sup> day of July, 2018**

**KIARIE WAWERU KIARIE**

**JUDGE**