



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NUMBER 102 OF 2000

IN THE MATTER OF THE ESTATE OF NGUKU MACHARIA (DECEASED)

PETER MWANGI NGUKU.....PETITIONER

VERSUS

CHARLES MWANGI MUTUANGURE & ANOTHER....PROTESTOR

RULING

1. This ruling is in respect of the application dated 7/4/2017. Through a summons premised on **Rule 74 Cap 160 Laws of Kenya** (sic), Charles Mwangi Mutuangure seeks an order;

(a) The court do confirm the grant in accordance with the one dated 14/2/2006 and order land parcel No/ Loc 9/Kanyenyaini/1495 be distributed to the 1st protestor Charles Mwangi Mutuangure.

2. He supports the summons through his affidavit sworn on even dated the gist of which is that the Court in a judgment dated 14/2/2006 decreed that the applicant was to get 2½ acres out of land parcel Loc 9/Kanyenyaini/921.

3. He states that by the time of the death of the deceased parcel number Loc 9/Kanyenyaini/921 had been subdivided into two (2) and one of the resultant parcels had been assigned to the applicant being parcel number Loc 9/Kanyenyaini/1495 which measures 2½ acres. The other portion had been sold by the son of the deceased one Mwangi to Samuel Mwangi Mukui.

4. The applicant thus urges that the only land left in the name of the deceased is the 2½ acres comprised in title number Loc 9/Kanyenyaini/1495.

5. The applicant urges that the confirmed grant dated 14/2/2006 is correct and the only change is the substitution of the petitioner who is deceased with one Hannah Wanjiku Mwangi.

6. He seeks that a confirmed grant be issued but with the substitution of the administrator.

7. The application elicited no response from the respondent despite leave for a replying affidavit having been granted on 12/7/2017 within 30 days.

8. I have considered the application before Court. More importantly, I have had occasion to peruse and internalize the ruling of this court (**Musinga J**) dated 14/2/2006.

9. I have noted from the record that by consent of the parties, Hannah Wanjiku Mwangi was substituted in place of Peter Mwangi Nguku (deceased) for purposes of effecting judgment dated 14/2/2006. The 1st protestor was to get 2.5 acres as per the said judgment and Hannah Wanjiku to get 1.5 acres and the 1st protestor was to cease using the 1.5 acres of land if at all he is (sic) using it.

10. From the above set of facts, it is clear in my mind that the 1st protestor is entitled to 2.5 acres of land from the estate of the deceased. He states that this is the only remaining land on the ground, the other part having been sold by a son of the deceased named Mwangi.

11. This assertion is not controverted by the administrator, who even after getting indulgence from the Court to file a response did not rise to the occasion.

12. To facilitate to the effective administration of the estate herein, I rectify the certificate of confirmation of grant dated 14/2/2006 to the extent that Hannah Wanjiku Mwangi is substituted in place of Mwangi Nguku as the administrator of the estate of Nguku Macharia and I

confirm the grant in the terms as seen on the certificate of confirmed grant dated 14/2/2006.

Dated and Signed at Nakuru this 11th day of October, 2018.

A. K. NDUNG'U

JUDGE