

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 262 OF 2012

In the Matter of the Estate of Martha Kanyai M'Impwi (Deceased)

JOHN THURANIRA IMPWI.....PETITIONER

RULING

Subdivision of estate land

[1] In a ruling delivered on 7th November 2017, the court declined the invitation to rectify grant as proposed in the summons for rectification of grant dated 31st August 2016. Towards that end, the court stated the following:-

...From what has been stated, the original grant and the proposed rectification differ in two aspects: identity of the beneficiaries and their respective shares. It should be noted that the grant has been confirmed and therefore no new beneficiaries can be introduced at this stage as parties attempted to do in this case. I have said it before and I will state it again, that the scope of rectification of grant under section 74 of the Law of Succession Act is quite limited and parties should resist the temptation of making substantive requests in the guise of rectification of grant. The court will resist such attempts. In this case, the only feasible undertaking is the topography of the land as to bring harmonious arrangement of the respective portions of land due to the beneficiaries as a way of attaining equity in the distribution of the estate property namely NYAKI/KITHOKA/2235. It is claimed that one part of NYAKI/KITHOKA/2235 is flat whilst the other part is hilly. Parties stated that it is difficult to erect a building on the hilly part unless with exceptional architecture meant for living on the cliff. This complaint is not a trifle but a matter of equity and fairness encapsulated in the principle of equality in distribution of the estate of the deceased; yet it is often not foreseen until much later during real subdivision of the estate property. The Petitioner has been accused of allocating himself the flat land and leaving the other beneficiaries to share the hilly part of the estate land. One thing should be understood here; that an administrator is not in any vantage position or with prior right or preference in the estate; he simply bears statutory and fiduciary obligations to administer the estate in accordance with the grant and the law. As a beneficiary, he is to be treated equal with all other beneficiaries with the same degree of entitlement. Therefore, in subdividing estate land, the surveyor should take into account the lay out of the property in order to attain equity and fairness. As parties seem to be at logger heads, I direct that a surveyor be appointed by the parties within 30 days to provide to the court a scheme of subdivision of NYAKI/KITHOKA/2235 which enables each beneficiary to have the benefit of the flat and the hilly parts of the estate property. This will provide equity and equality in the distribution of the estate land. Upon receipt of the survey report, the court will give further directions on how the beneficiaries shall pick their respective shares. It is so ordered.

[2] On the same day the above ruling was delivered, parties informed the court that they have agreed on a sketch plan for the subdivision of the estate land herein. The court directed parties to follow through on the agreement. Now, I do not see anything left for this matter to remain in active channel. The grant to be implemented in accordance with subdivision of the estate property by a qualified surveyor; in particular, subdivision of **LR. NYAKI/KITHOKA/2235**. Matter finalized.

Dated, signed and delivered in open court at Meru this 9th day of October 2018

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F. GIKONYO

JUDGE

Non appearance by parties

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F. GIKONYO

JUDGE