

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 611 OF 1995

IN THE MATTER OF THE ESTATE OF KIBUE KANGARI (DECEASED)

RULING

1. The Motion for determination is dated 20th July 2017. It seeks amendment of the grant made to the former administrator to have his name substituted with that of the administrators appointed on 23rd September 2016. They also seek that the titles in respect of Dagoretti/Waithaka/T96 and 154 be cancelled. The application is poorly conceived. Looking at the affidavit in support one notes that what is sought is not amendment of the grant but of the certificate of confirmation of grant. In fact, the applicants seeks a redistribution of the estate.

2. There is a reply to the application by Christopher Ruringi Kibue. He opposes the application. He objects to the cancellation of the title deeds on grounds that said title deeds were issued after a process that the applicants had participated in and benefited from. He argues that the applicants were appointed to complete administration on the basis of eth orders that are already in place. It is not clear whether the other respondents filed their replies to the application.

3. It was directed on 5th December 2018 that the application be disposed of by way of written submissions. There has been compliance.

4. From the written submissions by the applicant, it would appear that the application is meant to implement the orders made in the ruling delivered herein on 23rd September 2016 which directed the new administrators to apply to the court to have the certificate of confirmation of grant dated 26th March 1996 be rectified to conform with the orders made herein on 17th June 1997 and 8th December 2011.

5. The submissions by the other administrators read more like an affidavit in reply. The said administrators ought to have filed an affidavit to depose to the matters raised in the submissions, that one of the administrators had since died and so forth. Such information ought not be raised in written submissions, as such information should be disclosed in an affidavit, supported by appropriate documentation, such as certificates of death in this case.

6. It would appear that the other administrators do not oppose the application and complain that the applicant did not consult before coming to court.

7. I agree with the other administrators. The issues raised by them ought to be addressed first before the application to rectify the certificate of confirmation of grant is adverted to. I shall therefore direct that the other administrators file an affidavit in reply to the application to depose to the matters of fact mentioned in their written submissions on the deaths of some of the beneficiaries and administrators, supported by appropriate documents. The affidavit or affidavits shall be filed within fourteen (14) days. The matter shall thereafter be mentioned before the Presiding Judge for compliance and further directions.

DATED, SIGNED and DELIVERED at NAIROBI this 5TH DAY OF OCTOBER, 2018.

W. MUSYOKA

JUDGE