



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 504 OF 2009

IN THE MATTER OF THE ESTATE OF NJERU KARUIRUA (DECEASED)

JANEROSE RUGURU.....APPLICANT

VERSUS

NJAGI NJERU.....RESPONDENT

R U L I N G

A. Introduction

1. This is a ruling is the applicant's summons dated 16th May 2017 seeking for orders of rectification of the grant based on the following grounds:

- a) That when filing this succession one SWN was a minor.*
- b) That I was told to get another petitioner since there was a minor and I requested one NJAGI NJERU who agreed to be a co-petitioner.*
- c) That during the distribution of the estate of the deceased GATURI/NEMBURE/1105 NJAGI NJERU was given 0.85 Acres.*
- d) That I was given 0.75 Acres together with NJAGI NJERU to hold in trust for SWN.*
- e) That the said 0.75 Acres was supposed to be given to me to hold in trust for myself and SWN.*
- f) That the grant be rectified to read as follows;*

Land Number GATURI/NEMBURE/1105 be shared as follows;

Joseph K. Nyaga - To Get 0.85 Acres

Kinyua Njeru - To Get 0.85 Acres

Njagi Njeru - To Get 0.85 Acres

Peter Mugendi Njeru - To Get 0.85 Acres

Janerose Ruguru - To Get 0.75 Acres - To hold in trust of herself and SWN (Minor)

Margery Ruguru - To Get 0.75 Acres

Jenifer Weruma

Orinda Wanjiku Njuki

Kellen Wanjiku Njeru To Get 0.25 Acres Jointly

B. Applicant's Case

2. It was the applicant's case that she wanted the respondent's name removed as a trustee to the share of SWN on the grounds that she was S's mother whereas the respondent was her step-son and as such had nothing to do with her child's share.

C. Respondent's Case

3. The respondent stated it was a decision of the family that he be included as the co-trustee for the allotment to SWN and that he was afraid that the applicant would dispose off her daughter's share. He also stated SWN has attained 25 years of age and is married.

D. The Determination

4. **Section 74** of the **Law of Succession Act** provides:

“Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court.”

5. **Rule 43 (1)** of the **Probate and Administration Rules** provides:

“Where the holder of a grant seeks pursuant to the provisions of Section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of the death of the deceased, or in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons.”

6. Where mistakes and errors occur the Court has discretion to rectify the grant to correct errors, in names, description of the place and time of death. A close reading of these two provisions will show that the provisions of the Law of Succession Act and the Probate and Administration Rules is not analogous to the provisions in the Civil Procedure Rules on amendment of pleadings.

7. The provisions in **Section 74** and **Rule 43** are extremely restricted. They permit rectification of grants in three clearly defined cases: -

(a) errors in names and descriptions of persons or things;

(b) errors as to time or place of death of the deceased;

(c) in cases of a limited grant, the purpose for which such limited is made;

8. The power to rectify a grant is limited to these three situations or circumstances.

9. It is not in dispute that the applicant is the mother of the “minor” SWN who is said to have now become of age. It is also not in dispute that the respondent is a step-son of the applicant whose presence became necessary because of the requirements of the law. The law requires that there be two administrators where the beneficiaries or one of them are minors.

10. During the confirmation of the grant, the two administrators who are the applicant and the respondent were to hold the share of the minor in trust for her pending attainment of the age of majority. Both parties agree that the minor has now become of age and qualifies to be registered owner of the property. The inclusion of the applicant and the respondent in the registration of the land is no longer necessary and will not serve the intended purpose.

11. The grant is yet to be implemented and there is no error for correction in this application. However, due to the new development that SWN is not a minor, this court is obligated to do what is right to facilitate the implementation of the grant and save parties from unnecessary expenses in pursuing further litigation or processes of registration and transfer in favour of the said beneficiary.

12. For the foregoing reasons and in the interest of justice, I proceed to make the following orders: -

a) ***That the grant be rectified to the effect that SWN directly takes the share of 0.75 Acres out of L.R. GATURI/NEMBURE/1105.***

b) ***That the trustees Janerose Ruguru and Njagi Njeru be and are hereby discharged in respect of the share of SWN.***

c) ***An amended grant to issue.***

d) ***That each party meets their own costs***

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF DECEMBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Both parties present