

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2957 OF 2012

IN THE MATTER OF THE ESTATE OF KAGIRI NDUGI (DECEASED)

DAVID MUCHAI KAGIRI.....APPLICANT

RULING

1. The application seeking determination before me is dated 18th September 2018 and filed on 19th September 2018 filed pursuant to Section 73 of the Law of Succession rules 49 and 74 of the Probate and Administration rules. It is seeking rectification of the certificate of confirmation of grant issued to one Stephen Ngere Kagiri on 7th December 2011 so as to correct the property described as LR No. Gilgil/Gilgil/1018 to read Gilgil/Gilgil/1028.
2. The application is supported by a sworn affidavit deposed by one David Muchai Kagiri one of the beneficiaries who claimed that the administrator had refused to move the court to make the correction sought.
3. After perusing the court record, I note that the applicant herein had on 19th November 2017 moved the court vide application dated 16th October 2017 seeking orders of the court allowing the Deputy Registrar of the court to sign all necessary transfer (transmission) forms in place of the administrator one Stephen Ngere Kagiri who had allegedly refused to sign. Accordingly, Muigai, J granted that prayer on 9th April 2018 and an order to that effect issued on 16th April 2018.
4. I have perused the application herein which is not opposed. I have considered a copy of the search certificate in respect to Gilgil/Gilgil Block 1/1028 attached thereto. The property is already registered in the name of Stephen Ngere Kagiri (administrator) allegedly pursuant to the certificate of confirmation issued in this case on 7th December 2011.
5. However, according to the certificate of confirmation, L.R Gilgil/Gilgil Block 1/1018 was shared out to Joseph Muturi Kagiri and Titus Ndugi Kagiri each to get 2.488 acres. The certificate does not reflect neither L.R No. Gilgil/Gilgil Block 1/1028 nor Gilgil/Gilgil 1018 nor Gilgi/Gilgil/1028 which the applicant now wants reflected.
6. It is also not clear as to how Stephen Ngere Kagiri got Gilgil/Gilgil Block 1/1028 allegedly pursuant to the confirmed grant of 7th December 2012. For those reasons, this court is faced with four different parcels of land namely, Gilgil/Gilgil/1018 which is claimed to be an error, Gilgil/Gilgil/1028 which the applicant wants reflected, Gilgi/Gilgil Block 1/1018 which appears in the certificate of grant made on 7th September 2018 and Gilgil/Gilgil Block 1/1028 which the Land Registrar has already transferred to Stephen Ngere Kagiri purporting to be in execution of the grant and the transmissions forms signed by the Deputy Registrar.
7. Under Section 74 of the Law of Succession, this court can rectify errors in names and descriptions, or in setting out the time and place of deceased's death, or purpose in a limited grant. In the instant application though as simple as it appears, the discrepancies in the parcel of land in question and the transfer of a property No. Gilgil/Gilgil Block 1/1028 to Stephen Ngere Kagiri which does not exist in the certificate of confirmation herein has left me in doubt hence the need for confirmation from the Land Registrar Naivasha.
8. Accordingly, I am inclined to make the following orders:
 - (a) **That the Land Registrar Naivasha lands office to appear in court to confirm how LR Gilgil/Gilgil Block 1/1028 got transferred to Stephen Ngere Kagiri yet there is no such order under certificate of confirmation made on 7th December 2011.**
 - (b) **That the Land Registrar Naivasha to clarify on whether LR No. Gilgil/Gilgil Block 1/1018 reflected in the certificate of confirmation made on 7th December 2011 does exist and who is the registered owner.**
 - (c) **That the Land Registrar Naivasha to confirm on whether LR Nos Gilgil/Gilgil/1018 and or 1028 does exist and who are the registered owners.**
 - (d) **That the Land Registrar incharge Naivasha Lands Office to appear in person before the court on 10th December 2018 to clarify on the above issues before further orders can be made.**

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER 2018.

J.N. ONYIEGO

JUDGE