



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.263 OF 2009

**IN THE MATTER OF THE ESTATE OF THE MICAH MUKIRA GATHEKA *alias* ANDREW MUKIRA GATHEKIA
(DECEASED)**

MARGARET MUTHONI MUKIRA.....APPLIANT

VERSUS

ANN WANJIKU MUKIRA.....RESPONDENT

RULING

1. Before court is a summons for rectification of grant dated 3rd March, 2016 in which Margaret Muthoni Mukira (hereinafter the applicant) seeks orders:

(1) THAT the certificate of confirmation of grant of letters of administration issued on the 7th day of March, 2013 be rectified to include the shares and dividends in Salama Farmers Company Limited as part of the deceased estate and that the said shares and dividends be distributed equally between the two (2) houses.

(2) THAT the 3rd Administrator/Respondent ANN WANJIKU MUKIRA appears before this honourable court to show cause as to why she concealed the deceased shareholding in Salama Farmers Company Limited.

(3) THAT the Chairman Salama Farmers Company Limited stop giving any dividends to the 3rd Administrator/Respondent ANN WANJIKU MUKIRA in respect to the shares that the deceased herein held in Salama Farmers Company Limited

2. Four (4) grounds are listed in support of the application with a supporting affidavit of the applicant.

3. The gist of the grounds and the supporting affidavit is that since the confirmation of grant the applicant has learnt that some shares owned by the deceased in Salama Farmers Company Limited were not disclosed by the respondent and hence were not included in the distribution.

4. The applicants investigations revealed that the deceased had five (5) shares with Salama Farmers Company Limited.

5. The application is opposed. The respondent in a replying affidavit avers that the shares are legally hers. She annexes a “*shareholder personal record card*” as exhibit.

6. In rejoinder in a supplementary affidavit, the applicant states that the respondent has conveniently avoided stating how she came to be the owner of the shares in question.

7. It is averred that the deceased held share certificate numbers 190 and 191 for 1 and 4 shares respectively (same are annexed) and the chairman of Salama Farmers Company Limited confirmed this.

8. In a letter to the applicant's counsel, the chairman indicates that the shares were transferred to the respondent on 9th February, 2004 and respondent issued with share certificate No.341 which was later converted to 225. The letter is annexed.

9. I note on record Mr. Waichungo for respondent had intimated there would be a reply to the supplementary affidavit. None is on record.

10. I have considered the application and response thereto.

11. The letter by the chairman Salama Farmers Company Limited clearly shows that the subject shares belonged to the deceased at the time of his death.

12. The current record shows a transfer of the shares to the respondent on 19th December, 2004. This was after the death of the deceased. The chairman states in his letter that the respondent was the right nominee. It is not indicated on what basis this assertion is made since no attempt is made at an explanation based on company rules or regulations, Articles or Memorandum of Association.

13. In the absence of such, I must find and hold that the shares were part of the free property of the deceased which he could dispose in his lifetime.

14. Consequently and in line with the mode of distribution adopted by the parties during the confirmation of grant, the shares here should be included among the assets of the deceased and divided equally to all the children of the deceased as units and with the wife (respondent) as an extra unit.

15. I have considered the prayer to summon the respondent to show cause why she concealed the deceased's shareholding in Salama Farmers Company Limited. My considered view is that to foster harmony in this family, this prayer should be abandoned.

16. With the result that the five (5) shares held by the deceased in Salama Farmers Company Limited prior to his death and which are now held by Ann Wanjiku Mukira be included as part of the assets of the deceased herein and the same be distributed among all the children as units with the wife as an extra unit.

Dated, Signed and Delivered at Nakuru this 21st day of February, 2017.

A. K. NDUNG'U

JUDGE