



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 203 OF 2010

IN THE MATTER OF THE ESTATE OF CHARLES GUANDARU KAHWAI – DECEASED

JOSEPH NDIRITU GUANDARU.....PETITIONER/APPLICANT

RULING

By an application dated 4th May 2016 brought under certificate of urgency of the same date, the Petitioner herein filed Summons for Rectification of Grant under rule 43(1) of the Probate & Administration Rules of the Law of Succession Act Cap 160 of the Laws of Kenya.

The Summons is supported by his affidavit sworn on the 4th May 2016.

The application seeks an order to rectify the certificate of Confirmation of Grant to include the parcel of land LR No. LAIKIPIA/NANYUKI/MARURA BLOCK III (SWEET WATERS) 1473 which was inadvertently left out even though it formed part of the Estate of the deceased Charles Guandaru Thuita and which has been determined to Salome Wairimu Thuita.

From the record, the confirmation of grant was issued on the 13th May 2011 with respect to the properties and beneficiaries listed in the affidavit sworn by the petitioner on the 2nd February 2011 in support of the summons for the confirmation of grant of administration intestate.

In the affidavit in support of the summons for rectification, the Petitioner/ Applicant depones that at the time of confirmation of the grant, he inadvertently omitted the above named property. He also depones that all the beneficiaries of the deceased estate have consented to the parcel of land being determined to said Salome Wairimu Thuita. Annexed to his affidavit is a document titled “DECLARATION TO TRANSFER LR No. LAIKIPIA/NANYUKI/MARURA BLOCK III (SWEET WATERS) /1473 TO SALOME WAIRIMU THUITA FROM CHARLES GUANDARU KAHWAI” signed by Lydia Wacera Guandaru and her children being the beneficiaries of the estate.

It states that the reason for the transfer is that the deceased Charles Guandaru Thuita gave one Michael Thuita Charles, the said parcel of land. Michael Thuita Charles also died leaving his widow Salome Wairimu Thuita.

All the twelve beneficiaries were present in court and each one of them orally confirmed that s/he had no objection to the application by the Petitioner/ Applicant.

Rule 43 of the P&A rules provides for Rectification of grants as follows;

(1) 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 ... he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.

(2) Unless at the time of issue of the summons the registrar otherwise directs there shall be filed with the summons an affidavit in Form 13 by the applicant containing such information as is necessary to enable the court to deal with the matter.

(3) The summons, together with the affidavit (if any), shall without delay be laid by the registrar before the court which may either grant the application without the attendance of any person or direct that it be set down for hearing.

Section 74 of the Law of Succession Act provides for rectification of errors in grants;

Errors in names and descriptions... may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

From the foregoing the petitioner/applicant herein has demonstrated the error- his failure to include the above named property in his application for confirmation of the grant. All the beneficiaries agree with him that the grant be rectified and the same be determined to Salome Wairimu Thuita.

Having heard counsel for the petitioner, and all the beneficiaries, and having perused the application and the affidavit in support and its annexure, and having considered the applicable law, I allow the application in the following terms;

1. That the certificate of Confirmation of Grant of letters of grant issued to the petitioner and confirmed on the 13th May 2011 be rectified to include parcel of land LR.no LAIKIPIA/NANYUKI/MARURA BLOCK III (SWEET WATERS) 1473;
2. That the parcel of land LR.no LAIKIPIA/NANYUKI/MARURA BLOCK III (SWEET WATERS) 1473 be determined to SALOME WAIRIMU THUITA;
3. That the costs of this application be in the cause.

Dated, delivered and signed in open court in Nyeri this 8th day of February 2017

Court assistant -Harriet

TERESIA MATHEKA

JUDGE