

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 51 OF 1989

IN THE MATTER OF THE ESTATE OF JOHN CHEGE NDUATI (DECEASED)

RULING

Through summons dated 14th February, 2017 filed by one Paul Gitau Chege on his own behalf and that of Maryanne Wanjiru Chege and Geoffrey Mbugua Kmau his co-administrators, the applicant sought for orders seeking to rectify the certificate of confirmation of grant issued to the said administrators on 12/10/2011 so as to reflect the actual beneficiaries in respect of the plot numbers LR. No. 19131/3 Kiambu District (upper Chege) then shared out as per attached plan and shares schedule marked PA and LR No. 19131/5 Kiambu District (lower Chege) as per attached plan and schedule marked PB.

The applicant further prayed for issuance of a grant of letters of administration intestate granted by the court by consent on 1st March, 2006 but was never issued due to an oversight.

Application which is brought under Sections 43 and 73 of the Law of Succession, and Rule 43 of the Probate and Administration rules is supported by a sworn affidavit deposed by applicant herein

Mr. Chege for the applicant submitted that by the time the court confirmed the said grant, sub-division process of the two parcels of land was ongoing with survey plan already indicating the share of each beneficiary and when the deed plans were eventually approved and registered, each beneficiary was allocated his rightful share hence the new numbers.

I have considered application herein, supporting affidavit and submissions by counsel for the applicant. A perusal of the court file reveals that a grant of letters of administration intestate was issued to the applicant and his co-administrators by consent on 1st March, 2006. Although the court record does not reflect that consent order endorsed, the order of the court does reflect as such as it is duly signed by the Deputy Registrar. I will only assume that the Deputy Registrar might have forgotten to endorse the court file.

Despite granting the order directing the three to be joint administrators representing various interests in the estate, the grant was not issued for unknown reasons. Mr. Chege called that failure an omission since 2006.

However, considering that there is an order to that effect, I will allow prayer one and do direct that grant of letters of administration intestate do issue to the applicant and his co-administrators in compliance with the consent order of 1/3/2006. Regarding the amendment of the grant herein to reflect new numbers issued against various beneficiaries as per the attached plans referred to in the confirmed grant, it is not clear in whose names the new parcels of land introduced in the grant are. If the deceased had commenced sub-division which was never completed, and the beneficiaries knew their rightful shares as per the confirmed grant and attached plan, then the administrators should go ahead and transfer the same without introducing over 40 new parcels of land which did not exist during the life time of the deceased. I have tried to look at the said attached pan. They are loose papers which are not even certified. They do not reflect the beneficiaries against their respective plot or parcel of land.

For these reasons, prayer 2 of the application is disallowed and the original certificate of confirmed grant remains and one Paul Kamau and his co-administrators do transfer to the beneficiaries their respective shares after sub-division. We do not need direct transfer through the court when the administrators are there.

Accordingly, application partially succeeds in so far as prayer one is concerned and partially fails with regard to prayer two.

Order accordingly.

15/3/2017:

Before Hon. Justice Onyiego JN

Court Clerk – Edwin

Mr. Chege Advocate for the applicants

Court: Ruling delivered in open court before Mr. Chege for applicants.

J.N. ONYIEGO (JUDGE)

15/3/2017