



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**SUCCESSION CAUSE NO. 148 OF 2013**  
**IN THE MATTER OF THE ESTATE OF NJUKI KATHATA...DECEASED**

AND

**ABRAHAM KARIUKI NJUKI.....PETITIONER**

**VERSUS**

**AMOS GICHUKI NJUKI.....RESPONDENT**

**RULING**

1. The petitioner Abraham Kariuki Njuki filed Summons for Rectification of Grant under **Section 74** of the **Law of Succession Act, rule 43** of the **Probate and Administration Rules Cap 160 of the Laws of Kenya** and seeking orders that the certificate of confirmation of grant be rectified in a manner that the land parcel No. (sic) be distributed as follows:

- i. Abraham Kariuki Njuki -1.94 acres
- ii. Amos Gichuki Njuki - 0.75 acres

instead of;

- i. Abraham Gichuki Njuki 2.5 acres
- ii. Amos Gichuki Njuki 1 acre

2. The summons is supported by the affidavit of Abraham Kariuki Njuki sworn on 17<sup>th</sup> December, 2015. He depones that the grant of letters of administration has been confirmed and a certificate was issued. It was later discovered that Land parcel Number **MUTIRA/KANYEI/159** measures 2.69 acres instead of 3.5 acres. That the certificate of confirmation of grant be rectified to ensure that the distribution is in line with the size of the parcel of land.

3. The Respondent Amos Gichuki Njuki filed a replying affidavit and referred court to paragraph 5 of the affidavit. He objects to rectification proposed by the petitioner because the petitioner is the one who filed the application for confirmation of grant and indicated to this Court the mode of distribution and occasioned the mistake. The respondent proposes that the land parcel No. **MUTIRA/KANYEI/159** be shared as follows:

- a. Abraham Kariuki Njuki - 1.69 acres

b. Amos Gichuki Njuki - 1 acre

4. The respondent depones that he agreed to a lesser portion than that of the applicant instead of sharing the parcel equally because he wanted to remain on the upper side of the shamba that borders the main road. The respondent depones that the applicant has not given an explanation why his portion ought to be affected by his mistake.

5. The petitioner when he filed this petition annexed a copy of the green card for the Land Parcel No. **MUTIRA/KANYEI/159** which shows that the approximate area is 1.09 Hectares. The certificate of confirmation of grant shows that the parcel was to be distributed so that petitioner gets 2.5 acres while the respondent would get 1 acre. This was a mistake as this is more than what is shown on the green card. The summons for rectification of grant has merits as there is an apparent mistake. **Section 74** of the **Law of Succession Act Cap 160** provides that:

***“Errors in names and descriptions, or in setting out the time and place of deceased’s death, or the purpose in a limited grant, may be rectified by the court and the grant of representation whether before or after confirmation, may be altered and amended accordingly”.***

6. The parties concede that there was a mistake in the way the parcel of land was distributed. The application has merits. The parties have not agreed on distribution. The applicant was to get a bigger portion. I find that the land in acreage is 2.6 acres or thereabouts. It was the intention of the parties that the applicant gets a bigger portion as his land parcel does not border the main road. I find that it would be fair that the applicant gets 1.69 acres and the respondent to get one acre.

7. I will therefore allow the application and order that the grant be rectified so that the applicant gets 1.69 acres and the respondent to get one (1) acre. Each party to bear its own costs.

***Dated and delivered at Kerugoya this 3<sup>rd</sup> day of March, 2017.***

**L. W. GITARI**

**JUDGE**

Read out in open court, applicant present, Mr. Munene Muriuki Advocate for the Respondent, court assistant Naomi Murage by me this 3<sup>rd</sup> day of March, 2017.

**L. W. GITARI**

**JUDGE**