



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE NO. 157 OF 2007
IN THE MATTER OF THE ESTATE OF THE LATE ANDREW MUTUURA KURIA -
(DECEASED)

RULING

1. This ruling is in respect of the summons for rectification of grant dated 30th May, 2016.
2. The orders sought are:
 1. THAT Amended Certificate of Confirmation of Grant issued by the court on 9th November, 2009 to the said **GRACE MINNE** and **DANIEL KURIA MUTUURA** be rectified in that all the properties listed in the schedule of the mode of distribution in the names of the late **DANIEL KURIA MUTUURA** be rectified or amended to reflect the names of **CONSOLATA NYAMBURA GITAU, CHEROTICH STELLA, ANDREW MUTUURA KURIA** who are not the administrators of his estate
 2. THAT the costs of this application be costs in the cause.
3. The application is supported by the affidavit of Consolata Nyambura Gitau, Cherotich Stella and Andrew Mutuura Kuria and further premised on the following grounds.
 - a) THAT the co-administrator is now deceased.
 - b) THAT unless the applicants are granted the prayers sought, the beneficiaries of the estate of the co-administrator may be left out.
 - c) THAT it is important that the administrators get the shares of the deceased's properties which they propose to be transferred to them directly.
4. In a nutshell, the applicants' case is that Consolata Nyambura Gitau and Cherotich Stella are wives of Daniel Kuria Mutuura (deceased) while Andrew Mutuura Kuria is a son.
5. Daniel Mutuura Kuria was a co-administrator of the estate of Andrew Mutuura Kuria. Daniel is now deceased.
6. As heirs of Daniel Kuria Mutuura, the applicants are interested in inheriting the rightful share of Daniel in the estate of Andrew Mutuura Kuria.
7. At the hearing, a confirmed grant in respect of the estate of Daniel Kuria Mutuura given to Consolata

Nyambura Gitau, Cherotich Stella and Andrew Mutuura Kuria was exhibited.

8. The applicants indicated that they are content with the distribution and they only seek to have their names reflected in the grant in place of Daniel Kuria Mutuura (deceased).

9. The application met opposition from the co-administrator, Grace Minne Kuria who avers *inter alia* that she is aware that Daniel had sold some of the properties in his name to 3rd parties (Sale Agreements are annexed). The properties thus do not belong to Daniel.

10. Nakuru H.C.Succ.Cause No.688 of 2013 is still pending and the court is therefore yet to determined distribution of the estate of Daniel.

11. I have considered the summons before court, the supporting grounds and affidavit by the applicants. I have put into account the affidavit by the co-administrator.

12. It is noteworthy that the applicants have been appointed the administrators of Daniel Kuria Mutuura and the grant thereof has been confirmed.

13. It follows then that the applicants are entitled to all the properties of Andrew Mutuura Kuria (deceased) which were to transmit to Daniel Kuria Mutuura (deceased).

14. It is therefore in the interest of justice and in order to give effect to the grant herein that the names of the deceased (Daniel Kuria Mutuura) in the confirmed grant be substituted with that of the administrators of his estate being Consolata Nyambura Gitau, Cherotich Stella and Andrew Mutuura Kuria and to have the properties that were to transmit to Daniel now transmit to his administrators as such properties form part of his (Daniel's) estate.

15. I note that the co-administrator raises an issue about some probable sale of LR No.12167/134 to 3rd parties. Indeed, some sale agreements are annexed.

16. From the record, it is not shown that alleged affected parties were served or put on notice regarding this application.

17. It would serve the larger interests of justice if the named third parties are notified of these proceedings in order that they take a stand, on the matter.

18. I am persuaded however that the single property LR. No.12167/134 should not stall the entire administration of the estate of Daniel Kuria Mutuura.

19. Consequently I will allow the summons for rectification grant dated 30th May, 2016 to the extent that the further amended certificate of confirmation of grant shall in the meantime omit properly LR NO.12167/134.

20. Should the applicants be interested in property LR. NO.12167/134 service of this summons be effected on the four (4) alleged purchasers of properties from Daniel Kuria Mutuura. The said purchasers shall have 14 days to respond upon such service. Whereupon the matter be listed for hearing in the usual manner.

21. The costs of the summons herein be in the cause.

Dated, Signed and Delivered at Nakuru this 4th day of April, 2017.

A. K. NDUNG'U

JUDGE