



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION MILIMANI LAW COURTS
SUCCESSION CAUSE 800 of 2013
IN THE MATTER OF THE ESTATE OF FRANCIS THAIRU MUNYUA

RULING

1. The Court now has before it a Summons for Rectification of Grant for the Estate of Francis Thairu Munyua (“the Deceased”) who passed away on 11th May 2003. The Letters of Administration Intestate were issued on 9th July 2003 and confirmed on 24th September 2014. The Summons for Rectification and/or Amendment of the Letters of Administration and the Certificate of Confirmation was filed on 3rd March 2017.
2. The Application is brought by Henry Moses Thairu, David Morgan Gichuhi Thairu and Isaac Njoroge Thairu who are the Administrators of the Estate.
3. The Grounds for Rectification are that the Administrators firstly failed to include certain assets in the Schedule of Distribution. In addition, on of the Properties that was included, known as Dagoretti/Kinoo/128 contained an error. The error is not described. It is said that the error came to light when the Administrators “*applied for a consent to subdivide the parcel of land known as Dagoretti/Kinoo/128 as the mutation plans had different acreage than those exhibited in the certificate of confirmation of grant*”. The Supporting Affidavit does not explain how the error arose. However, from the evidence produced it seems that the suggested distribution put forward in the Summons for Confirmation of Grant was not feasible as it denotes different acreage than that recorded by the Surveyor. That was only discovered after the Surveyor had measured the land (6.9 acres) with a view to subdivision. The intended subdivision is marked on the attached Mutation Form. It is said that reflects the current occupation. The Court has no way of knowing whether that is in fact the position on the ground.
4. In addition, the Administrators seek rectification in relation to certain assets of the Estate that were inadvertently omitted from the Schedule of Distribution. Those were:
 - (1) 700 Shares in Co-Operative Bank of Kenya Limited
 - (2) 5350 Shares in Kenya Commercial Bank Limited
 - (3) 486 Shares in East African Breweries Ltd (Dividend Notice Attached)
5. The Assets are to be distributed according to the Schedules attached to the Consent of Distribution that has been signed by the intended recipient beneficiaries.

6. The Persons said to be entitled to receive a share in the additional Shares are:

- (a) Henry Moses Thairu,
- (b) Mary Nyaruai Wanaina (widow of Charles Wanaina Thairu)
- (c) Samuel Mungai Thairu,
- (d) David Morgan Gishuhi Thairu,
- (e) Margaret Wambui Mbugua
- (f) Bernard Kungu Thairu
- (g) Isaac Njoroge Thairu; and
- (h) Martha Wangui Ngobe (widow of Peter Muhoho Thairu)

7. However the only persons who have signed the consent are:

- (a) Mary Nyaruai Wanaina
- (b) Samuel Mungair Thairu,
- (c) Bernard Kungu Thairu; and
- (d) Martha Wangui Ngobe

In the circumstances, the consent to distribution is incomplete. In addition one or more of the beneficiaries may still be minors, and therefore their share must be held on trust by two trustees until they attains majority. That share is not designated, nor recognised. Nor are the three trustees named.

8. In relation to the Land there is no report from the Surveyor or indeed any document signed by him stating what his findings were in relation to the land. In the circumstances, the Application for rectification by adding additional assets to the Schedule is granted. However, the Application for confirmation of the Rectified Letters of Administration is premature in the face of missing evidence. That Application is adjourned to allow the Parties an opportunity to put before the Court full details of distribution in particular the divisions of the Property. The Administrators shall also file a Report from the Surveyor who completed the mutation setting out the exact measurements and his findings.

Order accordingly,

FARAH S.M. AMIN

JUDGE

Signed and Delivered in Nairobi on this the 9th day of May 2017

In the Presence of:

Court Assistant:

Applicants: