



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 163 OF 2003
IN THE MATTER OF THE ESTATE OF SIMON PETER NJOROGE NGURE (DECEASED)

RULING

1. The application dated 21st September 2015 is brought at the instance of Samson Njuguna Njoroge. It seeks rectification of the grant on record, as during confirmation of the grant a property was included which did not belong to the deceased. There is also a change in the acreages and it is explained that this was necessitated by fact that represented what was on the ground. There is also distribution of other assets that had not been distributed on 26th January 2004 and 6th July 2010. There is also a proposed distribution of wooden houses and accessories.
2. The application is partially opposed by Lucy Ngwaro Mbugua, who swore an affidavit in that behalf on 24th November 2015. She concedes that there was an error as an asset not belonging to the deceased was distributed. In her view what ought to have been distributed was another property, Kabete/Lower Kabete/119 instead of Kabete/Lower Kabete/448. She is however concerned about the inclusion of the other assets that were not previously distributed.
3. There is another affidavit on record by Irene Wangari Njoroge, sworn on 26th February 2016. She concedes that the property Kabete/Lower Kabete/448 was erroneously shared out at confirmation instead of Kabete/Lower Kabete/119 and indicates that she has no objection to the rectification proposed. She however objects to what appears to be the changes in the shares of the parties.
4. The co-administrator, Duncan Waweru Njoroge, swore an affidavit on an unknown date in 2015, filed herein on 14th December 2015, where he apparently denounced the application dated 21st September 2015, saying that it was filed without his consent. He subsequently renounced the said affidavit on oath in proceedings conducted on 13th July 2016. The same was accordingly marked as expunged from the record.
5. It was directed on 13th July 2016 that the application be disposed of by way of written submissions. There has been compliance with the said directions for the parties have filed their respective written submissions. I have had occasion to peruse through the said submissions and noted the arguments made therein.
6. Let me start by stating that the application before me ought to be for review of the orders made earlier confirming the grant, for section 74 provides for rectification of errors in a grant of representation. What is sought to be rectified is not the grant itself, but the formal order, taking the form of a certificate, extracted from the confirmation orders. Confirmation orders are not rectifiable under section 74 of the Law of Succession Act, Cap 160, Laws of Kenya.

7. Be that as it may, I shall proceed to determine the application dated 21st September 2015 as if it were a review application founded, as it should have been, on error on the face of the record and discovery of new facts not available at the time the orders were made.

8. It is common ground that at the stage the grant was being confirmed, the property, Kabete/ Lower Kabete/448, was placed before the court as belonging to the deceased and distributed, but it has since turned out that the correct property should have been Kabete/Lower Kabete/119 and not Kabete/Lower Kabete/448. All agree that there should be a correction of that error.

9. The concern of the respondents is with relation to the proposal to reduce the shares of the parties. The applicants explain that survey work was done on the subject assets for the purpose of mutation and eventual subdivision, and it was established that the acreage on the ground was actually smaller than that placed before the court. They would like the figures on the certificate of confirmation altered to conform to those on the ground. They have attached copies of the proposed subdivisions with what they claim to be the correct dimensions. I note that although the respondents challenge the same they have not presented material to controvert the applicants' position. I shall give the administrators the benefit of the doubt.

10. There is also concern about inclusion of other assets in the proposed schedule of distribution. This is about the shares in ICDC Investments Company Limited, what is now known as the Centum Limited. There is also a proposed distribution of wooden houses. There is no document attached to the affidavit in support to prove that the deceased did indeed own such shares. Regarding the wooden houses, there is no indication as to the land on which the alleged houses stand, for if they stand on Kabete/ Lower Kabete/119 or Kabete/ Lower Kabete/365 or both, then there would no need to distribute them as if they do not stand on any land. The houses should ideally pass according to the subdivisions set out in the charts attached to the first applicant's affidavit and marked as N-4, for they cannot be distributed independent of the land on which they stand.

11. In the end, I shall allow the removal of Kabete/Lower Kabete/448 from the certificate of confirmation of grant and have it replaced with Kabete/Lower Kabete/119. I shall also allow the alteration of the shares of the land as per the dimensions given in the charts in annexure N-4 of the affidavit of Samson Njuguna Njoroge. I shall also allow the inclusion of the shares in ICDC Investments Company Limited and their proposed distribution. However, I shall not allow the proposed distribution of the so called wooden houses and their accessories. The application dated 21st September 2015 shall be disposed in those terms, and the certificate of confirmation on record shall be amended accordingly.

12. The landed property is situated within Kabete of Kiambu County. The cause herein shall accordingly be transferred to the High Court of Kenya at Kiambu for final disposal.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE