



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

HIGH COURT SUCCESSION CAUSE NO. 908 OF 2014

IN THE MATTER OF THE ESTATE OF TARACICIO WACHIRA KABUTHU (DECEASED)

LYDIA MUGURE WACHIRA}

JOSEPH KIHUMBA WACHIRA} PETITIONERS

ANGELA GAKENIA WACHIRA}

R U L I N G

The summons for rectification of grant brought under Rule 41(1) of the Probate and Administration Rules.

The petitioners/ applicants were issued with a certificate of confirmation of grant on 5/11/2015 setting out the distribution of the Estate of the deceased.

The only issue for rectification is the distribution of Nyeri/Municipality Block 2/1260. According to the certificate of search dated 9/10/2014 the parcel of land was registered in the names of NDERI IGERIA and TARACISIO WACHIRA KABUTHU (deceased). In distributing the estate, the petitioners /applicants indicated that NDERI IGERIA was to inherit ½ share of L.R. Nyeri/Municipality Block 2/1260. According to their affidavit in support of the summons for confirmation of the grant the deceased had sold his ½ of share to one GEORGE MIATU MWEHE, and hence it was an error to indicate that Nderi Igeria was to inherit ½ share of the property yet he was the owner of ½ share of the same property.

That is the basis for the prayer that the ½ that belongs to the deceased be inherited by George Miatu Mwehe, and the certificate of confirmation of grant be rectified accordingly to reflect the same.

The summons contains another prayer; that the Nyeri District Land Registrar be ordered to dispense with the production of DAVID IRORI WACHIRA's pin certificate, National identity card, and photograph while registering the transfer and mutation forms in respect of LR. TETU/KIRITI/417 in accordance with the certificate of the grant.

In their supporting affidavit, the petitioner/applicants depone that the grant as confirmed provides that the 1st widow and all her children will share LR. TETU/KIRITI/417 equally, but the said David Irori Wachira has reduced to sign the necessary forms.

This prayer is strictly not about rectification and ought to have been brought under the appropriate rule – 73 of Law of Succession Act. Nevertheless, the error is curable.

Be that as it may; -

On the issue of rectification of the grant- it is true that the **TITLE LR NYERI MUNICIPALITY BLOCK 2/1260** is registered in the name of NDERI IGERIA and the deceased. However, I have nothing to show me that the deceased had indeed sold his share to the said George Miatu Mwehe, and neither are there consents from the other beneficiaries to support that position. There is an evident error in that Nderi Igeria is the owner of the ½ share and therefore ought to not inherit the deceased's share. That would mean he would have the whole parcel transferred to him.

I will allow the application for the grant to be rectified but only to the extent that the ½ share in LR. Nyeri Municipality Block 2/1260 belonging to the deceased will be inherited by the petitioners/applicants and not Nderi Igeria. If indeed there was a buyer, they can transfer the share to him.

With regard to registering the transfer and mutation forms in respect of **LR. TETU/KIRITI/417** in accordance with the certificate of the grant the Nyeri District Land Registrar be and is hereby ordered to dispense with the production of DAVID IRORI WACHIRA's pin certificate, National identity card, and photographs.

Orders Accordingly

Dated, Signed and Delivered this 15th Day of June 2017 at Nyeri.

Teresia Matheka

Judge

In the presence of;

Ms. Wambui Mwai holding brief for Ms. Lucy Mwai for the Applicants

Court Assistant Harriet