

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 379 OF 2015

IN THE MATTER OF THE ESTATE OF KAVOTI MWIRU (DECEASED)

JANET KAGURU.....APPLICANT

RULING

1. The applicant has filed this application under Rule 73 of the Probate and Administration Rules seeking the following orders. First, she seeks an order to direct the Land Registrar Embu to dispense with the production of the original title deed in respect of land parcel No. Gaturi/Nembure/8558 to enable her to fully implement the amended certificate of confirmed grant. Second, she seeks an order to make provision for costs.

2. The application is based on three grounds. The first ground is that the applicant is unable to fully implement the amended certificate of confirmed grant without producing the original title deed in respect of the above parcel of land. The second ground is that one Virginia Wamuu Kavoti had obtained the title deed in respect of the above suit land. The third ground is that this Virginia Wamuu Kavoti is now deceased and the said title deed cannot be traced.

3. The applicant's application is anchored in her supporting affidavit. She has deponed that she was substituted as the administrator of the estate of the deceased and the beneficiary of land parcel Nos Gaturi/Nembure/8556, 8557 and 8558 in terms of the amended certificate of confirmed grant. She has further deponed that land parcel No. Gaturi/Nembure/8558 had already been registered in the name of her co-wife Virginia Wamuu Kavoti, who is now late. She has also deponed that her deceased co-wife had already collected the title deed from the lands' office, but the same cannot be traced. It is her further affidavit evidence that the Land Registrar Embu cannot register the said parcel of land without the applicant surrendering the original title deed in respect of land parcel No. Gaturi/Nembure/8558. And finally, it is for these reasons that an order of this court is required directing the Land Registrar Embu to dispense with the production of the original title deed and register the said parcel of land in terms of the amended certificate of confirmed grant.

4. This application is not opposed. I find that the affidavit evidence of the applicant is credible. I also find that she was rightly substituted in place of her late co-wife, Virginia Wamuu Kavoti. Furthermore, I find that she cannot fully implement the amended grant without an order of this court by virtue of the position taken by the Land Registrar Embu.

5. In the circumstances, I find that the applicant has made out a case for the grant of her application in terms of prayer No. 1 of the chamber summons dated 3rd May 2016. I therefore grant her application in that regard.

6. There will be no order as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU this 18th day of JULY, 2016**

In the absence of the the petitioner and her counsel

Court clerk Njue

J.M. BWONWONGA

JUDGE

18.07.16.