



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 487 OF 2003**

**IN THE ESTATE OF VIOLET NYAMWINGA NDURU alias VIOLET NYAMWINGA AMOS –  
DECEASED**

**SAMUEL NGUGI NYAMWINGA ..... ADMINISTRATOR**

**V E R S U S**

**TERESA WANJIRU KINUTHIA ..... INTERESTED PARTY**

**RULING**

1. The Summons dated 1<sup>st</sup> September 2014 is for Rectification of the Grant of Letters of Administration confirmed on 22<sup>nd</sup> March 2004 and rectified on 25<sup>th</sup> January 2005 to Geoffrey Kinuthia Nyamwinga (hereinafter **Geoffrey**) and Samuel Ngugi Nyamwinga (hereinafter **Samuel**). The Summon was brought under Section 74 and 81 Law of Succession Act, Rule 43(1) Probate and Administration Rules, order 45 Civil Procedure Rules Sections 1, 1A, 1B, 3 & 3A Civil Procedure Act.
2. It was brought at the instance of the 2<sup>nd</sup> administrator Samuel and he prays for the following orders:-
  - a. **That Geoffrey Kinuthia Nyamwinga (Deceased) be removed as an Administrator.**
  - b. **That the assets known as Standard Bank & Kenya Commercial Bank Shares be removed from the schedule of assets.**
  - c. **That the asset known as Land Title Deed Karai/Gikambura/562 be substituted with Title Number Karai/Gikambura/2733.**
3. On 1<sup>st</sup> September 2014 Samuel swore an affidavit in support and deponed first, that the 1<sup>st</sup> Administrator Geoffrey had died on 18<sup>th</sup> May 2010, secondly, that the Standard Bank & Kenya commercial Shares have since been disposed of by way of sale and the proceeds distributed among the beneficiaries, and lastly, that the Land Title Number Karai/Gikambura/562 belonged to their grandmother and has since been subdivided and distributed among the beneficiaries. That the portion due to the Estate of the Deceased herein was apportioned No. Karai/Gikambura/2733.
4. On 13<sup>th</sup> October 2014 one Teresa Wanjiru Kinuthia (hereinafter **Teresa**), filed Summons under Rule 49 of the Probate and Administration Rules seeking leave to be joined as an Interested Party in this cause. She has attached a number of documents to her replying affidavit.

5. Her main grounds are that she is the widow of the late Geoffrey who was one of the Administrators of the Estate of Violet Nyamwinga Nduru alias Violet Nyamwinga Amos (hereinafter the **Deceased**) and he was also a beneficiary of her Estate. That the Deceased was entitled to inherit a portion of land Title No. Karai/Gikambura/562 which belonged to her mother, Grace Nguhi Michobo (Deceased), as evidenced by the Certificate of Confirmation of Grant issued in Nairobi High Court **Succession Cause No. 1978 of 2000**. That after the subdivision and distribution of the parcel of land Title No. Karai/Gikambura/562, the Deceased secured ownership of parcel No. Karai/Gikambura/2733.
6. In her affidavit Teresa depones that after the issuance of Certificate of Confirmation of Grant, Geoffrey inherited equal shares of Land Title No. Karai/Gikambura/2733, together with the other beneficiaries namely; Samuel Ngugi Nyamwinga, James Gichuru Nyamwinga and Francis Muiruri Nyamwinga respectively. That the new numbers are Karai/Gikambura/3834, 3835, 3836 and 3837 respectively, of which

Geoffrey inherited parcel No. Karai/Gikambura/3836, but passed away before he was issued with the Title document.

7. Teresa avers that Samuel fraudulently obtained title documents in respect of all the four portions of land and has tried to extort Kshs. 15,000/- from her in order to release her late husband's title document to her. She states that unless the orders prayed herein are granted, Samuel will fraudulently and illegally disinherit the Estate of Geoffrey.
8. In response Samuel states that the asset known as Land Title No. Karai/Gikambura/562 belonged to their grandmother and it has since been subdivided and apportioned Title No. Karai/Gikambura/2733, hence this application.
9. On 25<sup>th</sup> May 2015, Teresa through her counsel Mr. Eboso, filed written submissions and stated that this court can alter, rectify or amend a grant of representation whether, or not the grant has been confirmed. Mr. Eboso submitted that rectification is an equitable remedy, namely to correct errors made in documents emphasizing that it rectifies mistakes in the way a transaction is expressed in writing.
10. The law on rectification of grants is found in Section 74 of the Law of Succession Act, Cap 160 of the laws of Kenya which provides as follows-

**“74. Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”**

This provision provides for rectification of grants to correct errors in names and descriptions, or in setting out of the time and place of the deceased's death.

11. From the history of this matter as appears in the record, the Deceased herein died on 6<sup>th</sup> February 2000. The Grant of Letters of Administration in this cause was confirmed on 25<sup>th</sup> January 2005. The Deceased's beneficiaries were entitled to a portion of a parcel of land Title No. Karai/Gikambura/562, which belonged to the Deceased's mother, Grace Nguhi Michobo. This is evident from the Certificate of Confirmation of Grant issued in Nairobi High Court Succession Cause No. 1978 of 2000; in the Matter of the Estate of Grace Nguhi Michobo (Deceased). A copy of the Certificate marked as Annexure “TWK 5” to Teresa's affidavit. Land Title No. Karai/Gikambura/562 was accordingly sub-divided and Title No. Karai/Gikambura/2733 was transmitted to the beneficiaries of the Estate of the Deceased who had already died by that time.
12. It is not disputed by Samuel that Karai/Gikambura/2733 was subdivided and title documents issued in respect of the new sub-division and apportioned Nos. Karai/Gikambura/3834-37 as

confirmed by the Mutation Form. The record shows that he confirmed this before Muigai J. on 29<sup>th</sup> September 2014.

13. It would appear that Samuel is asking the court to amend the Certificate of Confirmation of Grant, to include property which is no longer in existence owing to the subdivisions stated above. Land Title No. Karai/Gikambura/2733 was subdivided into four (4) equal parcels being Karai/Gikambura/3834, 3835, 3836 and 3837. This is corroborated by the Mutation Form attached to Teresa's affidavit and marked "TWK 6". Samuel and his siblings the late Geoffrey, James Gichuru Nyamwinga and Francis Muiruri Nyamwinga inherited these equal portions directly. The Deceased herein therefore did not own Land Title Nos Karai/Gikambura/562 nor Karai/Gikambura/2733.
14. A copy of a Certificate of Search attached to Teresa Wanjiru Kinuthia's affidavit and marked "TWK 7" shows that Francis Muiruri Nyamwinga is the Registered owner of Title No. Karai/Gikambura/3835, Geoffrey Kinuthia Nyamwinga is the registered owner of Title No. Karai/Gikambura/3836 and Samuel is the registered owner of Karai/Gikambura/3837. These are all parcels created upon subdivision of Karai/Gikambura/2733. Samuel did not disclose this fact to the court, nor that he obtained title documents in respect of land Title No. Karai/Gikambura/3835 and 3836, without the other beneficiaries' consent or knowledge.
15. From the foregoing the applicant has not demonstrated what error(s) in names or descriptions he seeks to have rectified, or what new and important matters he has discovered that were not within his knowledge at the time the grant was confirmed, as required under Section 74 Laws of Succession Act.

In the premise I find that the application is lacking in merit and is dismissed accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 14<sup>th</sup> DAY OF July 2015.**

**L. ACHODE**

**JUDGE**