



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 255 OF 2004

IN THE MATTER OF THE ESTATE OF SAMUEL NDWIGA M'THARA (DECEASED)

FARRINGTON NJIRU NDWIGA.....APPLICANT

VERSUS

FREDRICK NJIRU NDWIGA.....PETITIONER/RESPONDENT

R U L I N G

1. The Applicant herein filed the application dated 24th January 2013, under Rule 44(1) Probate and Administration Rules seeking an order revoking the confirmed grant of 19/10/1999.
2. The reasons are that:-
 - (i) The Respondent (administrator) has failed to effect transmission of the various shares to the beneficiaries.
 - (ii) Land parcel No. Ngandori/Kiriari/1222 covers a smaller area on the ground than what is in the register.
 - (iii) In spite of (ii) the Respondent has failed to have the grant amended accordingly.
3. In his supporting affidavit he has reiterated the grounds.
4. The respondent filed a replying affidavit sworn on 5th March 2013. He actually blames the delays on the applicant who has been filing numerous applications and also constantly changing advocates.
5. He admits that the parcel complained of has lesser acreage than is registered. He also states that the provision of access roads had contributed to the decrease of the land available for distribution.
6. Both parties filed submissions as agreed.
7. I have considered the affidavits, the annexures and the submissions.
8. The deceased's estate herein comprised of two parcels of land namely:-
 - (I) Land parcel No. MBETI/KIAMURINGA/7
 - (II) Land parcel No. NGANDORI/KIRIARI/1222

9. The applicant has no problem with the 1st parcel of land.

10. His complaint is about the 2nd parcel which is of lesser acreage on the ground than that what is in the register. This has really nothing to do with the Respondent as the administrator.

11. It must be clear to the family members that as a result of the reduced acreage their previous allocations will have to be slightly reduced. The issue of access roads must also be considered when establishing their various shares.

12. This is something the family ought to have sat down and agreed on to enable the Respondent apply to Court for the necessary amendment.

13. I therefore find no serious reason to make this Court revoke/annul the confirmed grant to the Respondent.

The parties are directed to sit as a family and agree on how the land No. Ngandori/Kiriari/1222 will be redistributed among them taking into account the above mentioned facts. This should be done within 45 days.

14. Once they have agreed on the mode of redistribution the Respondent may then apply for the necessary amendment. The beneficiaries must be present in Court when the application for amendment comes for hearing or they may file consents to the amendments.

15. Otherwise the application for revocation/annulment lacks in merit and is dismissed.

No orders as to costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 2ND DAY OF JULY 2014.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Nderitu for Kiama for Applicant

Mr. Ithiga for P.N. Mugo for Respondent

Parties

Njue CC