

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1932 of 2007

IN THE ESTATE OF PETER NGETHE KAMAU– (DECEASED)

RULING

Jane Wangari Ngethe is the administrator of the estate Peter Ng'ethe Kamau. The grant was confirmed on 12th May 2009. The estate comprises of two households: one of Jane Wangari Ng'ethe and her children, and the other of Rahab Wanjiru Ng'ethe and her children.

This application touches on only two assets – Kiambaa/Karura/T22 and Kiambaa/Karura/T24. According to the certificate of confirmation issued on 5th June 2009, Kiambaa/Karura/T22 went to Rahab Wanjiru Ng'ethe and her children while Kiambaa/Karura/T24 went to Jane Wangari Ng'ethe and her children. The administrator argues there was a mistake and the must have been a mix up. She says Rahab Wanjiru Ng'ethe and her children reside at Kiambaa/Karuri/T24 and not T22, while Jane Wangari Ng'ethe and her children are on Kiambaa/Karura/T22 and not T/24. She asks that the certificate of confirmation of grant be rectified to correct the error.

I have perused the confirmation application dated 17th November 2008. I have noted that the error was of the administrator, she proposed that Kiambaa/Karura/T22 be allocated to Rahab Wanjiru Ng'ethe while Kiambaa/Karura/T24 be allocation to Jane Wangari Ng'ethe. This was not an error on the face of the record. It cannot be cured by **Section 74** of the Law of Succession Act.

The applicant should have come to court under Rule 63 of the Probate and Administration Rules and Order 44 of the Civil Procedure Rules, seeking to have the order of the 12th May 2009., reviewed. Under Order 44 of the Civil Procedure Rules, which applies by virtue of Rule 63, a court order can be renewed where there are sufficient reasons for such review. I find that sufficient reasons do exist in this case, the applicant should have properly sought review of the order of 12th May 2009.

I have power under Rule 73 of the Probate and Administration Rules to do justice. I will invoke that power to review the order of the court made on 12th May 2009. The certificate of confirmation of grant issued on 5th June 2009 is hereby reviewed along the lines proposed in the application dated 15th July 2013. A fresh certificate shall issue accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 10th DAY OF May, 2013.

W. M. MUSYOKA

JUDGE