



In re Estate of Thomas Makokha Wakhuleche (Deceased) (Succession Cause 232 of 1994) [2024] KEHC 706 (KLR) (26 January 2024) (Ruling)

Neutral citation: [2024] KEHC 706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 232 OF 1994
PJO OTIENO, J
JANUARY 26, 2024**

IN THE MATTER OF THE ESTATE OF THOMAS MAKOKHA WAKHULECHE (DECEASED)

BETWEEN

JOSEPHINE MAKOKHA 1ST ADMINISTRATRIX

MARYAM MUSEBE 2ND ADMINISTRATRIX

AND

FRANCIS OPIYO 1ST RESPONDENT

PATRICK NATERIE OYIERA 2ND RESPONDENT

RULING

1. Before this court is the applicant's untitled application dated July 5, 2023 brought pursuant to sections 98,1A,3 and 3A of the *Civil Procedure Act* and order 51 of the *Civil Procedure Rules* seeking for orders that the rectified certificate of confirmation of grant issued to the applicants on 5/12/2022 be further rectified so that the four beneficiaries namely Josephine Makokha Watitwa, Mariam Musebe Oyiera, Idah Odhiambo Ndaliro and Makureti Were Oyiera do take their respective portions from plot numbers North/Wanga/Indangalasha/1241 and 1263.
2. The application is supported by the affidavit of Josephine Makokha Watitwa sworn on July 5, 2023 in which she avers that in a ruling delivered on 23/2/2012, her and her sisters were to get two acres each from plot numbers North/Wanga/Indangalasha/1241 and 1243 and that the confirmed grant issued on 23/2/2012 and rectified on 5/2/2022 captured this position. She claims that when they sought the services of a surveyor to implement the confirmed grant, they learnt that plot number North/Wanga/Indangalasha/1243 was closed on 16/12/2008 following a subdivision and new numbers that is 1263 and 64 were created.



3. It is her assertion that since the Hon. Judge observed that he did not wish to disturb the particulars of the portions allocated to the four of them and that they should be granted their respective shares from portions in the respondent's name, that land parcel North/Wanga/Indangalasha/1241 be allocated to Idah Odhiambo Ndaliro, Makureti Were Oyiero and Mariam Musebe Oyiera with each getting two acres while she gets 2 acres from plot number North/Wanga/Indangalasha 1263. She also avers that their names as captured in the grant is not the same as those written in their National Identity Cards. Another prayer she seeks is that the deputy registrar be directed to execute the instruments of transfer since the respondents have not been co-operative. The application has not been opposed.
4. In the confirmed grant rectified by this court on the 5th day of December, 2022, the court directed that Josephine Makokha, Maryam Makokha, Ida Odhiambo and Marcela Were were to get their respective 2 acres portions from the properties of the deceased known as North/Wanga/Indangalasia/1241 and 1243.
5. The applicants have however learnt that property known as North/Wanga/Indangalasia/1243 has since been sub divided into 1263 and 1264. This position is not contested and the subject application simply says that the property allocated to them in the certificate of confirmation of grant does not reflect what is in the registry following a subdivision. The application seeks to rectify that anomaly. Since the subject application does not disturb the distribution of the deceased's estate as directed and confirmed by this court, I hereby issue the following orders;
 - a. Idah Odhiambo Ndaliro, Makureti Were Oyiero and Mariam Musebe Oyiera to be allocated 2 acres each from parcel of land known as North/Wanga/Indangalasha/1241.
 - b. Josephine Makokha to be allocated 2 acres from parcel of land known as North/Wanga/Indangalasha 1263
 - c. Josephine Makokha Watitwa, Mariam Musebe Oyiera, Idah Odhiambo Ndaliro and Makureti Were Oyiera to provide copies of their National Identity Cards in order to ensure that their names are correctly captured in the certificate for confirmation of grant.
 - d. The deputy registrar is hereby directed to execute the instruments of transfer to reflect the distribution in the certificate for confirmation of grant.
 - e. I make no order as to costs.
6. Let the administrator have the estate transmitted to those entitled within 90 days from today. Mention on

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 26TH DAY OF JANUARY, 2024

PATRICK J O OTIENO

JUDGE

In the presence of:

Ms. Nafuye for Administratrix

Court Assistant: Polycap

