



REPUBLIC OF KENYA



In re Estate Walter Maitai Mathenge (Deceased) (Succession Cause 517 of 2005) [2024] KEHC 15457 (KLR) (Family) (23 April 2024) (Ruling)

Neutral citation: [2024] KEHC 15457 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 517 OF 2005

EKO OGOLA, J

APRIL 23, 2024

IN THE MATTER OF THE ESTATE OF WALTER MAITAI MATHENGE (DECEASED)

IN THE MATTER OF

ALIAS CHARLES NJERU MAITAI 1ST APPLICANT

MUCHANGI MAITAI MATHENGE 2ND APPLICANT

RULING

1. The summons before this court is dated 7th May 2019. The applicants pray for the following orders:-
 - a. That this Honorable Court be pleased to rectify the Certificate of Confirmation of Grant on 30th January 2018 by Honorable Justice A. Muchelule by distributing Land Reference Number 25103/5 (Title Number IR 141700) according to the Survey Plan dated 19th October 2018 as follows:
 - i. Charles Maitai Mathenge-28.655 Ha
 - ii. William Mbuthia Maitai- 16.855 Ha
 - iii. Muchangi Maitai Mathenge -17.755 Ha
 - iv. David Kagumba Maitai -17.879 Ha
 - v. James Mathenge Maitai- 7.936 Ha
 - b. That Gladwin Wangechi Maitai (deceased) was registered as lessee of Land Reference Number 25103/5 in her capacity as Administrator of the Estate of Walter Maitai Mathenge (deceased) by virtue of the Grant of Administration with written Will annexed issued on 12th day of May 2005 and the Certificate of Confirmation of Grant issued on 14th October 2008.



- c. That the proceedings in the Chief Magistrate Court at Nyeri Succession Cause No. 5 of 2019: In the Matter of the Estate of Gladwin Wangechi Maitai (deceased) be stayed pending the hearing and determination of this application.
 - d. That the name of the administrator Charles Njeru Maitai be rectified to read Charles Maitai Mathenge as per his National Identity Card.
 - e. That the Honorable Court do grant any other order it deems fit in the interest of justice.
 - f. That costs be in the cause.
2. The Summons were supported by the applicants' joint affidavit. The deceased died testate on 19th January 2003. The grant of administration with Will annexed was issued to the deceased widow, Gladwin Wangeci Maitai on 12th May 2005. Subsequently, the Certificate of Confirmation of Grant was issued on 14th October 2008.
 3. The applicants deposed that one Muhoya Kagumba (deceased) was the registered owner of LR No. 3430/2 measuring approximately 1778 acres. At the time of the deceased death, he had purchased a portion, 220.121 acres, of LR No. 3430/2 from Muhoya Kagumba who died intestate on 12th March 1968. The portion of land purchased by the deceased was renamed LR No. 25103/5 and on 9th May 2012 it was transferred and registered in the name of Gladwin Wangeci Maitai as the administrator of the deceased estate. However, on 19th September 2012, Gladwin Wangeci Maitai died without distributing the said land to the intended beneficiaries.
 4. The applicants are now the administrators of the deceased estate and a Certificate of Confirmation of Grant was issued to them on 30th January 2018. The applicants deposed that at the time of confirmation of the grant, they had the false impression that LR No. 25103/5 measured 230.6 acres (93.321 Ha) instead of 89.08 Ha as surveyed.
 5. According to the applicants, before they could petition this court to rectify the grant, their brothers William Mbutia Maitai and David Kagumba Maitai filed a succession suit in the Chief Magistrate's Courts in Nyeri for the Succession Proceedings for the estate of Gladwin Wangeci Maitai. In those proceedings, what is to be distributed is the property of the late Gladwin Wangeci Maitai is LR No. 25103/5. The applicants argue that LR No. 25103/5 was only registered in the name of the late Gladwin Wangeci Maitai as an administrator of the deceased estate and not in her personal capacity.

Determination

6. I have considered the Summons, the affidavit in support, the annexures, and the entire record of the court. From the averments of the applicants, LR No. 25103/5 belonged to the deceased and it was only registered in the name of Gladwin Wangeci Maitai as an administrator of the deceased estate. On the other hand, there are ongoing succession proceedings for the late Gladwin Wangeci Maitai and in those proceedings, LR No. 25103/5 forms part of Gladwin Wangeci Maitai's estate.
7. The applicants annexed a copy of the Instrument of Assent by the Public Trustee as the personal representative of the estate of the late Muhoya Kagumba. In the said assent, the public trustee transferred LR No. 25103/5 to Gladwin Wangeci Maitai as the administrator of the estate of the deceased herein. Therefore, the said property belongs to the deceased estate.
8. Furthermore, the applicants prayed for rectification of the description of LR No. 25103/5 which was earlier stated to measure 93.321 Ha instead of 89.08 Ha. Also, the rectification of the names of one of the beneficiaries from Charles Njeru Maitai to Charles Maitai Mathenge.



9. Rectification of Grants is provided for by Section 74 of the *Law of Succession Act*, Cap 160, Laws of Kenya which provides as follows:-

“Errors in names and descriptions, or in setting forth 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.”

10. Rule 43(1) of the *Probate and Administration Rules* further stipulates that:-

“43(1) Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names of descriptions of any person or thing or as to the time or place of the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

11. From the aforementioned provisions, rectification is allowed to correct a misdescription of a property or to correct a name which has not been fully or properly described in the Grant. The orders prayed for by the applicants meet the threshold set in Section 74 and Rule 43 aforementioned.

12. From the foregoing, I allow the Summons dated 7th May 2019 as prayed and I make the following Orders:-

- a. The Certificate of Confirmation of Grant issued on 30th January 2018 be rectified as follows:-
Land Reference Number 25103/5 (Title Number IR 141700) measuring 89.08 Ha be distributed to the following beneficiaries in the following manner:-
 - i. Charles Maitai Mathenge-28.655 Ha
 - ii. William Mbuthia Maitai- 16.855 Ha
 - iii. Muchangi Maitai Mathenge -17.755 Ha
 - iv. David Kagumba Maitai -17.879 Ha
 - v. James Mathenge Maitai- 7.936 Ha
- b. The name of ‘Charles Njeru Maitai’ be rectified to read as ‘Charles Maitai Mathenge’.
- c. The property known as Land Reference Number 25103/5 (Title Number IR 141700) measuring 89.08 Ha forms part of the estate of Walter Maitai Mathenge (Deceased)
- d. The proceedings in the Chief Magistrate Court at Nyeri Succession Cause No. 5 of 2019: In the Matter of the Estate of Gladwin Wangechi Maitai (deceased) is hereby stayed with regards to Land Reference Number 25103/5 (Title Number IR 141700).
- e. Costs be in the cause.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF APRIL 2024

E.K. OGOLA

JUDGE

In the presence of:



Ms. Namai h/b for Mr. Kemero for the Applicants
Gisiele Mohamed Court Assistant

