



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

**SUCCESSION CAUSE NO. 3711 OF 2004**

**JOSEPH KAMAU NGUGI.....APPLICANT**

**Versus**

**REBECCA NJERI KAMAU.....RESPONDENT**

**RULING ON DIRECTIONS**

The applicant, Joseph Kamau Ngugi filed the Summons dated 8th December 2004 seeking for orders that, the amended grant of Letters of Administration made on 6th day of May, 2004 be revoked to the extent of plot No. Loc/4/Gakarara/1156/23. This is on the grounds that the proceedings to obtain the amended grant were defective in substance.

Secondly the amended confirmed grant was obtained fraudulently by making a false statement and by concealment of something material to the case. Thirdly that the amended grant was obtained by means of an untrue allegation of a fact material in point of law to justify the amendment of the grant.

The application is supported by an affidavit of the applicant and he has detailed the circumstances under which the amended grant was obtained.

Firstly the applicant filed Succession Cause No. 605 of 2002 before this court challenging the amended grant in so far as it included parcel No. Loc 4/Gakarara 1156/23. His complaint was that there was no order authorizing the amendment although he had no problem with the original grant.

By a ruling issued on 16th December 2003 by Hon. Waweru J. he made the following remarks

**“The applicant’s case is that the unlawful amended grant has enabled the whole of PLOT NO. 1156.25 KANDARA to be treated as an asset of the deceased whereas he was entitled to only one third thereof. They say they have no quarrel with the original certificate of grant. I do not know how they can have no quarrel with the original certificate of confirmation of grant which lists the same property, apparently in whole, as one of the assets of the deceased.”**

**But the court can grant only what a party seeks. The amended certificate of confirmation of grant is illegal, null and void as there was no order by the lower court authorizing it. It is hereby concluded. The original certificate of confirmation shall remain in force”.**

It would appear that the petitioner filed another application seeking to amend the grant to include this parcel of land. This is the Summons dated 19th February 2004 which was heard, and the orders

were granted on 6th May 2004 according to the records of the lower court.

The applicant's complaint is that he was never served with the application and he has interests over the above parcel of land which the petitioner is now threatening to evict them from its occupation.

When this matter came up for hearing I was requested by counsel to take time and read the file to be able to give proper directions in view of the inherent powers vested in this court to ensure the ends of justice and prevent the abuse of the court process.

I have therefore considered the application and the supporting affidavit and I have also perused the court records. This application is similar to the one that was dealt with by Hon. Waweru J. The reason why the certificate of Amended grant was declared null and void was because there was no record to show that the court ever issued an order of amendment.

In the present case, there is an order by the learned Magistrate G.M. Njuguna made on 6th May 2004 the only problem is that the applicants say they were never served with the application for amendment.

I have looked at the application, it was to be served upon John Mukima and Ruth Nyambura there is no indication that the applicant was to be served. The issue for determination herein is whether in the absence of service, the applicant is entitled to the prayers sought. The applicant's grievance is to do with the amendment that included Loc 4/Gakarara/1156/23 in place of Kandara Market T/1156.

In my humble view the proper procedure for the applicant was to file an application under Rule 41(1) (3) seeking for the determination of the declared share or his share of the suit premises. This ought to have been done before the grant was confirmed. Since the grant was confirmed, and the applicant claims some interests over the suit premises, the available remedy is to file a substantive civil suit against the petitioner as the administrator of the deceased estate.

Secondly if the applicant was dissatisfied with the order issued on 7th May 2004 amending the grant, his remedy would have been an appeal to this court or application for review of the orders of amendment by the same court that issued the amendment. In that case the court would have been able to establish whether he was served, and whether he had any interest in the deceased estate. The current application in my humble view is bad in law and is therefore an abuse of the court process and I hereby strike it with costs to the petitioner.

It is so ordered.

Ruling read and signed on 28th January 2005.

**MARTHA KOOME**

**JUDGE**



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