



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 396 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE MUSA M'RUGONGO M'RINTURI -DECEASED

STANLEY MBURUGU M'RUGONGO.....PETITIONER

Vs

RHODA KAJUJU.....1ST APPLICANT

MONICA KAGWIRIA RUGONGO.....2ND APPLICANT

RULING

Application dated 9th November 2015 filed by Rodah Kajuju on 9th November 2015 seeks to rectify grant confirmed to Eunice Gaceri Mbaya on 25th June 2014 for reasons land parcel No. Abothuguchi/Riuga/1525 which forms part of the estate of the deceased the Late Musa M'Rugongo M'Rinturi was not included in the list of assets and was not distributed.

It was claimed the Administrator could not be trusted to distribute the estate fairly considering her conduct as she is dishonest and unfair. It was sought that the court issues restraining orders against the ongoing mining on L.R. No. Abothuguchi/Riuga/1525.

The applicants allege that petitioner forged their signatures during confirmation and that they were not in court on the date matter for cause came up for confirmations. Rodah Kajuju, Jennifer Kajira Rugongo, Mercy Kareanki and Nancy Kauna all filed affidavits supporting application dated 9th November 2015 for rectification of confirmed grant.

The succession cause herein was filed on the basis of certificate of Death dated 1st July 2001 indicating that Musa M'Rugongo M'Rinturi died on 4th September 2001. Chief of Kirigana Location wrote a letter dated 28th May 2009 confirming the beneficiaries/dependants of the deceased.

Form P & A 5 lists the names of the survivors and property indicating Abothuguchi/Kariene/3, LR Upper/Kavogo/973 and Abothuguchi/Riuga/1525. Grant of Letters of Administration was made on 19th August 2010 to Stanley M'Rugongo M'Rinturi. Stanley Rugongo M'Rinturi died on 23.4.2011 as per chief's letter dated 30.5.2012 and was substituted by Eunice Gacheri the current Administrator upon application dated 30th May 2012. Application for confirmation dated 12th April 2013 was filed as even date accompanied by supporting affidavit and consent to confirmation and mode of distribution duly signed by:-

- Jenniffer Kajira Kiambati
- Nancy Kauna Gitonga
- Rhoda Kajuju Rugongo
- Monica Kagwiria Rugongo
- Grace Kaguri Kigunda
- Japhet Kinyua Rugongo
- Eliud Mutua Rugongo
- Susan Kinya Gikunda
- Francis Mwiti Mburugu
- Jediel Gitonga Mburugu
- Eunice Gaceri Mbaya
- Edith Kathambi Gikunda

Grant was confirmed on 15th April 2013. The court noted that all the beneficiaries were in court save for Rhoda Kajuju and Jediel Gitonga. Rhoda Kajuju is one of the interested parties in the application for rectification dated 9th November 2015.

On 16th July 2014 the Administrator Eunice Gaceri Mbaya filed an application for rectification of grant confirmed on 15.4.2013 and the application was allowed in terms of paragraph 2 of her affidavit particulars of rectification is not specified in proceedings.

I agree with counsel for the Administrator that provisions of section 74 and Rule 43 of the law of succession Act and Law of Succession Rules Permit rectification of grant in three clearly defined instances which do not include prayers made by the applicants herein. The applicants are essentially praying for nullification of grant as shown in paragraph 4 of the affidavit sworn by Rhoda Kajuju on 1st February 2016, Failure by Rhoda Kajuju to cite the correct sections of the law in the view of this court doesn't invalidate her claim as she is seeking substantive justice as opposed to procedural technicality as proceeding is merely supposed to aid substantive justice rather than obstruct it. Rhoda Kajuju was provided for according to what the Administrator felt was due to her but she was never consulted. She was not asked for her consent to confirmation or mode of distribution and she was not present when confirmation was done. Nothing in the file shows she was informed. Had she been given equal share from the estate then there would have been no cause for alarm. Being that the Administrator appears to have gotten the lion's share there was cause for alarm and this court finds that even concern is valid and therefore orders that the grant confirmed to Eunice Gaceri Mbaya is nullified/Revoked and all transactions proceeding from the confirmed grant are declared null ab initio. Each party to bear own cost.

A.ONG'INJO

JUDGE

29.6.2017

Before Hon. A. Ong'injo

Ms Muna Advocate H/B for Nyamokeri Ombachi Advocate for Respondent

1st Applicant – N/A

2nd Applicant – PIP

Court

Ruling, Delivered Dated and Signed in court this 29th June 2017.

A.ONG'INJO

JUDGE



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