



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Luka Kuta Shayo alias Luka K. Shayo (Deceased) (Succession Cause 446 of 2014) [2023] KEHC 22982 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22982 (KLR)

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

SUCCESSION CAUSE 446 OF 2014

SC CHIRCHIR, J

SEPTEMBER 29, 2023

**IN THE MATTER OF THE ESTATE OF LUKA KUTA SHAYO ALIAS
LUKA K. SHAYO.(DECEASED)**

RULING

1. The summons dated November 22, 2022 seeks for rectification of grant. the rectification sought is as follows; -
 - i. That Seline Nambuye Kuta and Zakayo Kivuli Kuta to jointly share 0.64 hectares out of LR Kakamega/Surungai/1409
 - ii. That Sammy Soita to get a share of 0.2 Hectares out of LR No Kakamega/Surungai/1409
 - iii. That Esther Nasike to get a share of 0.08 Hectares out of LR No Kakamega/Surungai/1409
 - iv. That Selina Nambuye Kuta will have a life interest on:
 - a. LR No North Kabras/Surungai/1410
 - b. LR .No North Kabras/Surungai/1411
 - c. LR No North Kabras/Surungai/1412
 - d. LR No North Kabras/Surungai/1413
 - e. LR No North Kabras/Surungai/1414
 - f. LR No North Kabras/Surungai/1415
 - g. LR No North Kabras/Surungai/1418
 - v. That a rectified grant be issued to reflect the above changes
2. The application is supported by the Affidavit of Sammy Soita who describes himself as the beneficiary of the Estate



3. There is also a consent signed on November 22, 2022 in support of the proposed rectification of grant

Applicant's Case

4. It is the Applicant's case that in the confirmed grant he was awarded 0.5 hectares instead of 0.2 hectares out of LR Kakamega/Surungai/1409 and that the grant should be rectified to show an allocation of 0.2 to him instead of 0.5 hectares.
5. It is further stated that Land parcel No Kabras/Surungai/1411 was omitted in the certificate of grant yet it forms part of the deceased's estate. That consequently, the said land parcel has been left out of the administration and risks being wasted and the beneficiaries have failed to get to share the said land.
6. Finally, it is submitted that the administrator, Selina Nambuye should have a life interest on the parcel alongside the other land parcels as stated in prayer IV of the application.

Determination

What is rectification of grant?

7. Section 74 of the *Law of Succession Act* provides as follows: -

“Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court,”

Rule 43(1) of the *Probate and Administration Rules* provides: -

“where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error on the grant as to the names or description of any person or things 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”

8. In the case of *In the matter of the estate of Haslon Mwangi Kahero (2013) eKLR* the court held concerning rectification: “an error is essentially a mistake. For the purpose of section 74 and Rule 43 it must relate to a name or description of time and place of the deceased's death of the purpose of a limited grant. Is the omission of a name or in the description of a thing an error? It would be an error if say a word in the full name of a person is omitted or a ward number or figure in a description is omitted.

But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that word amount to the error or mistake envisaged in section 74 and Rule 43”.

9. In this summons, the applicant seeks for inclusion of property known as North Kabras / Surungai/1411 among the assets of the estate. This property was left out during the applicants for the grant and also during confirmation. It also seeks for re-distribution of parcel No North Kabras/ Surungai/1409.
10. The above 2 proposals are not rectification within the context of section 74 of the *Act* and Rule 43 of the *Probate and Administration Rules*. The power given to the court in the 2 aforesaid sections are related to the situations specified above.



11. *In the matter of the Estate of Geoffrey Kinuthia Nyamwinga* (2013) eKLR the court had this to say about the aforesaid powers on rectification or alteration of grants in section 74 of the *Law of succession Act* and Rule 43 of the *Probate and Administration Rules*.

“What these provisions mean is that the errors may be rectified by the court where they relate to names of descriptions or setting out the time or place of the deceased’s death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.....”

12. I have perused the petition for letters of Administration. The property known as Land Parcel No North Kabras/Surungai/1411 was never listed amongst the Estate properties. It is being introduced for the first time into through these proceedings
13. It is not therefore an error which is legible for correction within the context of section 74 of the *Act* or Rule 43 of the *Probate and Administration Rules*. The proposed re-distribution of North Kabras/Surungai/1409 is what it is; a re-distribution, not a rectification, of an error.
14. However, much one may wish to stretch the interpretation of sections 74 of the *Act* and Rule 43, the above proposed changes will never fit the description of rectification. These are new issues for which the applicant should be seeking a review or amendment but not rectification.
15. In view of the a foregoing the application is incompetent and the same is hereby struck off. There shall be no orders as to costs

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER, 2023.

S. CHIRCHIR

JUDGE

In the presence of:-

E.Zalo- Court Assistant

No appearance by the parties.

