



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Rodegers Kisaka Paul (Deceased) (Succession Cause
103 of 2005) [2023] KEHC 24721 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24721 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 103 OF 2005
SC CHIRCHIR, J
OCTOBER 26, 2023**

**IN THE MATTER OF
FLORENCE NAJALA KISAKA PETITIONER**

RULING

1. Through the Notice of motion dated 23rd January 2012 the Administrator/ Applicant seeks for the following orders:

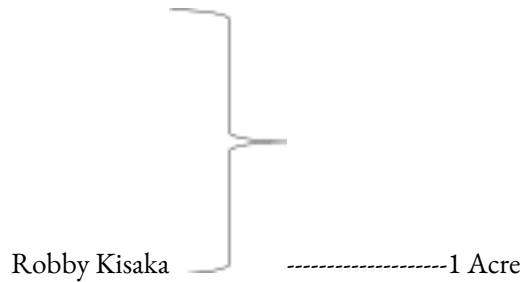
1. That the application be certified as urgent and be heard on priority basis.
2. That the certificate of confirmation of grant dated 29th day of June 2007 be amended or rectified as follows;

That the parcel number Kabras/Luandeti/293 be distributed amongst the beneficiaries as follows;

A. 2771 3.0 HA

- I. Julius Kisaka-----1.5 Acres
- II. Jackson Kisaka-----1.5 acres
- III. Harrison Kisaka----- 1.5 Acres
- IV. Alfred B. Kisaka-----1.5 Acres
- V. Betty Kisaka
Lydia Kisaka
Judith Kisaka
Doris Kisaka





- B. 2772- 0.04 HA Florence Nanjala Kisaka
- C. 2773- 0.04 HA Florence Nanjala Kisaka
- D. 2774- 0.04 HA Florence Nanjala Kisaka
- E. 2775- 0.04 HA Florence Nanjala Kisaka
- F. 2776- 0.04 HA Florence Nanjala Kisaka
- G. 2777- 0.04 HA Florence Nanjala Kisaka
- H. 2778- 0.04 HA Florence Nanjala Kisaka
- I. 2779- 0.04 HA Florence Nanjala Kisaka

- 3) That the cost of the sub-division, surveyor's fees and the costs of the succession proceedings be recovered from the estate.
2. The Application is supported by the Affidavit of even date sworn by the petitioner/applicant where she deponed that she filed the succession proceedings and was issued with a certificate of confirmation of the grant on 14th March 2007 to whole the whole land parcel number Kakamega/Luandeti /293 in trust for all the other beneficiaries.
 3. She states that she has been managing the whole parcel of land for the beneficiaries but she now wants to distribute the estate amongst the beneficiaries so that they can have their specific shares for their own use.
 4. The Administrator further states that some of the beneficiaries have been insisting on having their won shares to the extent of suing the Administrator seeking for allocation of their shares.
 5. She then proceeds to propose the distribution of the of land parcel Kakamega/Luandeti/293 as per the above prayer 2 of the Application and she informs the court that the parcel has since been distributed.
 6. She finally stated that she has managed Kakamega/Luandeti/293 in the best interest of all the beneficiaries.
 7. The Application is opposed by one of the beneficiaries, one Julius Kisaka Misiko filed a replying affidavit dated 4th June 2012 in reply and stated that the redistribution by the petitioner is not fair since it left out some of the beneficiaries who are;
 - i. Hassan Kisaka (son)
 - ii. Hellen Makonjio Kisaka(daughter)
 - iii. Joseph Kisaka (son)
 - iv. Sandra Kisaka (daughter).



8. He submits that the petitioner did not disclose that she had obtained Kshs. 1,000,000/= which was a pension from the estate which she was to use to carter for school fees for the children.
9. He further claimed that the petitioner had already sub divided out the parcel of land Kabras/Luandeti/293 into 2771,2779 and that she was on a selling spree in the guise of school fees for the children and given to herself all the commercial plots. He avers that Applicant has pushed all the other beneficiary to the periphery and allocating them the land that was barely arable land.
10. He opined that all the beneficiaries are entitled to at least part of the commercially arable plots and that all the beneficiaries to share the land equally.
11. The law relating to rectification of grants is provided for in section 74 of the *Law of Succession Act*, cap 160, Laws of Kenya, and rule 43(1) of the *Probate and Administration Rules*. Section 74 provides as follows: “Errors may be rectified by court, 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.”
12. Rule 43(1) provides as follows: “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 or descriptions of any person or thing or as to the time or place of 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 made.”
13. Section 74 of the *Law of Succession Act* and rule 43(1) of the *Probate and Administration Rules*, provides for limited correction of errors such as 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.
14. The Applicant has approached the court in the name of rectification, yet the substance of the Application is about redistribution of the property. No matter how far one may want to stretch the the interpretation of section 74 of the Act and Rule 43 of the probate and administration Rules, a clear attempt to redistribute the Estate property is far from rectification. I don’t think I need to belabour this position.
15. Further, and in any event, redistribution will require the consent of the other beneficiaries of the Estate. I have not seen such consent on record.
16. It is apparent that this is an attempt by the Applicant to deal with issues now arising or remain unresolved in the administration of the Estate under the guise of rectification. The apparent dispute(s) cannot be resolved through rectification. The Application is misconceived and it is hereby disallowed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 26TH DAY OF OCTOBER, 2023.

S. CHIRCHIR

JUDGE.

