



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 142 OF 1992

IN THE MATTER OF THE ESTATE OF WAMBUGU NGERA(DECEASED)

CECILIA THOGORI WANJERU.....APPLICANT/PETITIONER

RULING

1. The application for determination dated 25th June 2021 is brought under **Section 74 of the Law of Succession Act, Rules 43, 63 & 73 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules** seeking for orders for rectification of grant that was confirmed on 29th November 2019.

2. The application is unopposed.

The Applicant's Case

3. It is the applicant's case that the grant of letters of administration intestate was confirmed on 29th November 2019 pursuant to a judgment delivered on the same date. The court ordered that the estate of the deceased be shared equally among the four houses of the deceased. The 2nd and 4th house were allocated each 2.05 acres to be held in trust by the applicant. However, the applicant states that the final order reads 1st and 3rd house instead which does not reflect the judgment of the court. As such, the 4th house has been left out which renders a sufficient reason to warrant a review. Further, the applicant states that her name and those of other beneficiaries were erroneously entered and the same should be rectified to read as per their identity cards. That of Cecilia Thongori Wanjeru to be rectified to read Cecilia Thogori Wanjeru; Cecilia Wahome to be rectified to read Cecilia Mumbi and Thomas Gathuta to be rectified to read Thomas Gatutha Wahome.

4. The applicant contends that the apparent errors in the judgment and the description of the names of the parties has delayed the conclusion of the transmission process and the administration of the estate. As such, the applicant urges the court to allow her applicant to expedite the conclusion of the administration of the estate by granting the orders sought.

The Applicant's Submissions

5. The applicant relies on **Order 45 of the Civil Procedure Rules, Section 74 of the Law of Succession Act and Rule 63 of the Probate & Administration Rules** and reiterates what she has deponed in her affidavit. She submits that the court shared the estate of the deceased equally amongst the four houses but the final order omitted to make provisions for the 2nd and 4th houses. The applicant was to hold 4.10 acres in trust for the 2nd and 4th houses.

6. The applicant urges the court to allow her application and relies on the cases of **In Re Estate of Oliokampai Sarapae Sanguti (Deceased) [2019] eKLR** and **In Re Estate of Hezeron Muriuki Njonju (Deceased) [2017] eKLR** to support her case.

Issues for determination

7. After careful analysis, the main issues for determination are twofold:-

- a) Whether the judgment delivered on 29th November 2019 should be reviewed to include the 4th house of the deceased in the distribution of the estate.
- b) Whether the mistakes in the names of the beneficiaries should be rectified as proposed.

The Law

8. Rectification of grant is provided for in **Section 74 of the Law of Succession Act, Cap 160 Laws of Kenya and Rule 43(1) of the Probate & Administration Rules. Section 74** 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.

9. **Rule 43(1)** provides:-

Where the holder of the 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 and 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.

10. Thus, rectification of grant of letters of administration is limited to matters set out in section 74 of the Law of Succession Act. These matters specifically refer to corrections of error which the court may order without changing the substance of the grant. These include errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of persons or things.

11. The issue of rectification of grant has been addressed in various decisions in the High Court which I have considered here as persuasive authorities.

12. **In the matter of the Estate of Hasalon Mwangi Kahero [2013] eKLR**

“An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is an 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 word or 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 would amount to the error or mistake envisaged in Section 74 and Rule 43.”

13. Similarly in **In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] eKLR:-**

“The law on rectification or alteration of grants is Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules....What these provisions mean is that errors may be rectified by the court where they relate to names or 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....

Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the Law of Succession Act, the applicant ought to approach the court under order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this provision-Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”

14. The applicant seeks to have the grant rectified to correctly reflect her name and those of the beneficiaries as per their identity cards as follows:- Cecilia Thongori Wanjeru to be rectified to read Cecilia Thogori Wanjeru; Cecilia Wahome to be rectified to read Cecilia Mumbi and Thomas Gathuta to be rectified to read Thomas Gatutha Wahome. She has annexed their identity cards to support her argument. I am persuaded that the rectification sought falls under section 74 of the Act particularly an error in names and description. The judgment on page 6 also depicts these names as described by the applicant. I therefore find that there is an error in the names of the applicant and the beneficiaries and allow the application for rectification to reflect their names as per their attached identity cards.

15. The applicant also contends that the 4th house was left out in the final orders of the judgment from distribution despite the court allocating each house an equal share of the estate. On perusal of the judgment, on page 11, the court allocated a share of the estate to the 2nd and 4th house to be held in trust by the applicant. The court had noted on the same page that the 2nd house had no survivor and as such, no share was given in respect of the said house. The distribution was therefore made in favour of the 1st, 3rd and 4th house.

16. On page 12 of the judgment, there is an error in the final orders No. 3 that distributed “4.10 acres made up of two parcels of 2.05 acres each for the second and third houses...” instead of to the second and fourth houses as per the content of the judgment.

17. It is my considered view that there is an error apparent on the face of the record in order No. 3 of the judgment which requires correction to give proper interpretation based on the content of the judgment as a whole.

18. Consequently, I find this application dated 25th June 2021 merited and allow it in the following terms:-

a) That the judgment delivered on 29th November 2019 is hereby reviewed in order No. 3 on page 12 to read as follows:-

4.10 acres made up of two parcels of 2.05 acres each for the second and fourth houses respectively shall be registered in the name of Cecilia Thogori Wanjeru strictly to hold in trust for the grandchildren of the deceased in those two houses.

b) That the names of the beneficiaries in the grant issued on 29th November 2019 to Cecilia Thongori Wanjeru are rectified to read as follows:-

i. Cecilia Thogori Wanjeru

ii. Cecilia Mumbi

iii. Thomas Gathutha Wahome

c) That an amended grant to issue in terms of Orders (a) and (b) of this ruling.

d) That there will be no orders as to costs.

19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 27TH DAY OF JANUARY, 2022.

F. MUCHEMI

JUDGE

Ruling delivered through videolink this 27th day of January, 2022.