



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION APPEAL NO. 20 OF 2019**

**IN THE MATTER OF THE ESTATE OF KAHIGA MWATHI (DECEASED)**

**STEPHEN MWATHI KAHIGA.....RESPONDENT/APPLICANT**

**VERSUS**

**VIRGINIA KARUNGARI CHUMA.....APPELLANT/RESPONDENT**

**RULING**

**Brief facts**

1. This application dated 31<sup>st</sup> August 2021 seeks for orders for review of the judgment delivered on 3<sup>rd</sup> June 2021. The applicant contends that one of the beneficiaries, Duncan Kahiga Wanjiku was left out in the distribution of Land Parcel No. UASONYIRO/SUGUROI BL IV/464.
2. The application is unopposed by the other beneficiaries.

**The Applicant's Case**

3. The applicant states that he is an administrator of the estate and is authorized to swear the affidavit on behalf of one of the beneficiaries, Duncan Kahiga Wanjiku who was left out during the distribution of Land Parcel No. UASONYIRO/SUGUROI BL IV/464 (suit property). The applicant further states that the said beneficiary is a son to Phyllis Wanjiku Kahiga, who is a daughter to the deceased and sister in law to Margaret Wanjiku Wandeto.
4. The applicant contends that the error may have occurred due to the surname Wanjiku as the beneficiary was lumped up together with Samuel Wanjiku Wandeto. The applicant thus prays that the error be corrected so that Duncan Kahiga Wanjiku can get his rightful share.

**Issue for determination**

5. After careful analysis, we humbly submit that the main issue for determination is whether the judgement delivered on 3<sup>rd</sup> June 2021 should be reviewed to include Duncan Kahiga Wanjiku in the distribution of Land Parcel No. UASONYIRO/SUGUROI BL IV/464.

**The Law**

6. 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.**

7. **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.**

8. 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.

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

**10. 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.”**

**11. 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.”**

12. The applicant was the responded in this appeal. He seeks to have the grant rectified to include Duncan Kahiga Wanjiku in the distribution of L.R Uasonyiro/Suguroi/BL IV/464. I have perused both page 9 and 10 of the judgement and note there are errors on both pages. On page 9, the said Duncan Kahiga Wanjiku was identified as a beneficiary a grandson to take his mother’s share Phyllis Wanjiku Kahiga. On page 10, his name was erroneously left out in the distribution of L.R Uasonyiro/Suguroi/ BL IV/465 where all the beneficiaries got equal shares.

13. The applicant was a party in the appeal and was the administrator in the lower court Nyeri CM Succession Cause No. 489”B” of 2018. I am of the view that the applicant is possessed of the capacity to bring this application.

14. Having identified the errors apparent in the judgement delivered on 3<sup>rd</sup> June 2021, I hereby allow the application which in my considered view fall squarely under the provisions of **Section 74** of the Act. It is hereby ordered that the judgement be reviewed as follows:-

Paragraph 38 ii) to read:

Margaret Wanjiku Wandeto’s share to go to her children Duncan Kahiga Wandeto and Samuel Muchiri Wandeto in equal shares.

Paragraph 38 vii) is hereby added as a new item to read:

Duncan Kahiga Wanjiku

15. L.R . Uasonyiro/Suguroi/Block IV/464 will be shared equally by seven beneficiaries including Duncan Kahiga Wanjiku.

16. There shall be no order as to costs.

17. An amended grant to issue with the foregoing changes made in the judgement as per paragraph 14 of this ruling

18. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**F. MUCHEMI**

**JUDGE**

**Ruling delivered through videolink this 24<sup>th</sup> day of February, 2022**