

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1903 OF 2015

IN THE MATTER OF THE ESTATE OF SILAS MUIGAI GICHOMBO (DECEASED)

LUCIA MUTHONI SILAS.....APPLICANT

VERSUS

JAMES MITHIA GICHOMBO.....1ST OBJECTOR

GOERGE GICHOMBO MUIGAI.....2ND OBJECTOR

RULING

1. The application seeking the rectification of a grant or certificate of confirmation is very limited in its scope. Under **section 74** of the **Law of Succession Act (Cap 160)**, errors on grants of representation may be rectified by the court. It provides that:-

“Errors in names and descriptions, or in setting fourth 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.”

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

“(1) 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 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 in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

3. The court in **In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [20131eKLR]** noted that the power to order rectification under **section 74** of the **Act** and **rule 43(1)** of the **Rules** is limited to correction of errors relating to names or descriptions or setting out of the time or place of the deceased's death.

4. In the instant case, the deceased Silas Muigai Gichombo died intestate on 10th March 2001. He was survived by his widow Lucia Muthoni Silas (the applicant) and eight children who included the objectors James Mithia Gichombo and George Gichombo Muigai. He left an estate comprising parcels of land and shares in limited liability companies. The initial grant was issued jointly to the applicant and one of her daughters, the late Agnes Njeri Muigai. This was in Kiambu **Succession Cause No. 190 of 2007**. It was subsequently revoked and a fresh grant issued in the names of the applicant and the 2nd objector. On 15th August 2016 the applicant applied for the confirmation of the grant. She proposed how she wanted the estate of the deceased to be distributed to the beneficiaries. The objectors and their brother Dennis Thuo Muigai were opposed to the proposed mode. The 2nd objector filed a protest. The court referred the matter to mediation by elders. The elders affirmed the applicant's proposal. All beneficiaries signed. However, the objectors later disowned the consent. The objectors filed their objection and protest to the distribution. Justice Ali-Aroni heard the dispute in which the applicant and the rest of her family were on one side and her three sons (the objectors and Dennis Thuo Muigai) were on the other side. The court agreed with the distribution proposed by the widow, except for LR Gatamaiyu/Kagwe/193 and LR Gatamaiyu/Kagwe/T.215/32 in respect of which it was indicated how it would be shared. A certificate of confirmation was issued.

5. The 1st objector was dissatisfied with the distribution and has lodged **Civil Appeal No. COACA/E428/2020** to the Court of Appeal. He has also filed an application before that court seeking the stay of the orders of this Court. The appeal and application have not been heard.

6. In the present application dated 7th October 2020 under **section 74** of the **Act**, the applicant seeks the rectification of the names of four of the beneficiaries and also the name of the deceased. She stated that she realised that the names had errors which needed to be rectified to enable the implementation of the certificate of confirmation. She wants the name of the deceased to be rectified to read Silas Muigai Gichombo alias Silas Muigai alias Muigai Gichombo, her name to be Luica Muthoni Silas instead of Lucia Muthoni Gichombo, the name of George Gichombo Silas to be George Gichombo Muigai and Kennedy Muigai to be Kennedy Muigai Wanjiku.

7. The 1st objector filed replying affidavit to oppose the application. One, he said that because of the appeal and application at the Court of Appeal this court is *functus officio*. Secondly, in view of the appeal there is likelihood to have the decision of this court conflict with that of the Court of Appeal. Thirdly, in view of the matters in the Court of Appeal this court should stay its proceedings.

8. This court is the one that issued the judgment that led to the issuance of the certificate of confirmation in which the estate of the deceased has been distributed to the beneficiaries, who include the objectors. Under **section 74** of the **Act** and **rule 43(1)** of the **Rules** this court has power to order rectification of the certificate of confirmation in the manner proposed by the applicant. The court is not *functus officio*.

9. Further, there is no stay of the judgment and decree that has been issued either by this court or the Court of Appeal. Until there is stay, the applicant has the right and obligation to distribute the estate of the deceased as ordered by the certificate of confirmation.

10. Lastly, the objectors have no issue with the substance of the application. They have no issue with the correction of the names in the certificate of confirmation. There is no intention on the part of the applicant to rearrange the distribution, or to remove or add the beneficiaries.

11. As a result, I allow the application with costs.

DATED and DELIVERED NAIROBI this 15TH day of FEBRUARY 2021.

A.O. MUCHELULE

JUDGE