



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO.203 OF 2007

IN THE MATTER OF THE ESTATE OF JAPHET M'RINTAUGU KAIREBU ALIAS RINTAUGU S/O KAIREBI (DECEASED)

NANCY NKANANCHI KINYUAPETITIONER

VERSUS

JAMES NDEREBA MWONGERA.....1ST APPLICANT

CHARITY GAKII.....2ND APPLICANT

ZIPORA KINYA.....3RD APPLICANT

PRISCILLA GACHERI.....4TH APPLICANT

RULING

1. The application I am called upon to determine is dated 4/12/2018, brought pursuant to section 74 of the Law of Succession Act and Rules 43 & 73 of the Probate and Administration Rules. In it, the applicants seek rectification of the further amended certificate of confirmation of grant issued on 23/9/2015 for purposes of re-distribution of the share of John Mutwiri M'Mwongera equally between himself, James Ndereba Mwongera, Charity Gakii and Zipora Kinya.

2. The grounds upon which the application is premised are set in the application and supporting affidavit of James Ndereba Mwongera, the 1st applicant herein, sworn on 4/12/2018. It is argued that the entire share of the applicants' mother (now deceased) was erroneously given to their brother John Mutwiri Mwongera, to their detriment. It is important to point out even at this early juncture that the import of the rectification sought is to re-distribute the share due to John Mutwiri Mwongera (henceforth called the respondent) equally amongst the 1st to 3rd applicants and the said John Mutwiri Mwongera. The application was further supported by the Supplementary affidavit of the 1st applicant filed on the 25.10.2019 in which it was denied that the mother of the four disputants had indicated that the property goes to the respondent entirely. The applicant in response to the assertion that he had secretly colluded with their uncles to apply for grant and individually benefit of their maternal grandfather's estate, asserted that his participation in that succession cause was known and sanctioned by the mother who chose him as the family representative pursuant to which the mother's share was registered in his name as a representative of the family. Pursuant to such registration, one of the parcels of land known as Abothuguchi/Kithirune/1184 was sold and the proceeds thereof shared equally among his siblings including the respondent. He denied having chased the mother from her matrimonial home and asserted that it was the respondent who convinced her to move with him to the disputed property in these proceedings. That the family's share in the paternal grandfather's estate being Nanyuki/Marura Block 8/4164 was secretly transferred by the respondent in his favour which fact the respondent has concealed from the court. He denied being the trouble maker but accused the respondent for being the source of family conflict and for manipulating the mother before her death

3. John Mutwiri Mwongera opposed he application through his replying affidavits sworn on 25/2/2019 and a Further Replying Affidavit sworn on 4/11/2019. In the two Affidavits he contends that his mother directed that he gets her share in this estate, due to the fact that the 1st applicant had colluded with his uncles to jointly register his paternal grandfather's parcel No. **ABOTHUGUCHI/GITHONGO/289** in their names and chased him away together with his mother (now deceased) from the said land, which prompted him to go and live with his mother on **ABOTHUGUCHI/KITHIRUNE/280**, until her demise. He urged the court to dismiss the application, as all his siblings had been adequately provided for from the paternal grandfather by taking shares belonging to their mother to the exclusion of the mother and the respondent. He then exhibited documents to show that his siblings got shares of land in Nanyuki to his exclusion and that the 1st applicant had repeatedly threatened to kill their mother, complaints were lodged with the police and the 1st applicant was in fact prosecuted. He also exhibited a judgment in Githongo ELC 79 of 2018 to show that there was a litigation over the burial place of their mother which directed that she be buried in the suit land. The further replying affidavit essentially and merely reiterates what was asserted in the replying Affidavit with an addition that the petition herein was filed with the participation of all the children of the deceased including the mother to the disputants

one Alice Mware and that the applicant here was being propelled by greed.

4. The application was directed to be canvassed by way of written submissions, which were respectively filed on 28/11/2019 and 21/5/2021, with each party supporting his respective position.

5. The single issue for determination is whether the prayer for rectification with a view to redistributing the share of the respondent in Abothuguchi/ kithirune/280 can be granted. That issue is best answered by posing the question if grounds for rectification of a confirmed grant have been established.

6. I am of the learning that rectification of a grant under **Section 74 of the Law of Succession and rule 43 of the Probate and Administration Rules** is limited to the need of correcting errors and misdescription only. That position was reiterated in ***Re Estate of Njagi Rurima (Deceased) [2020] eKLR***, where the court said:

“There is no provision in the Act that permits rectification or amendment by adding a new beneficiary in the grant or to redistribute the estate.”

7. Similarly, in ***Re Estate of John Mwaka Koka (Deceased) [2019] eKLR***, the court stated that:

“It is clear from the orders sought in this application that what is sought by the applicant herein is strictly speaking not an order for rectification but one for review. Section 74 of the Law of Succession Act which deals with rectification states as follows: -

“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose of in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered or amended accordingly.”

“The reliefs sought are not restricted to rectification of errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose of, in a limited grant. They are in fact prayers which substantially seek to alter the judgement delivered by this court on distribution of the estate. They therefore ought to be treated for what they seek, review of the judgement.”

8. The nature of the rectification sought by the applicants is to re-distribute the share of John Mutwiri to the 1st to 3rd applicants on the basis that he got which was not meant to be his. That is never a ground for rectification. I see the application to substantially seek the alteration of the very structure and substitution of the distribution as ordered by the court on the 08/05/2013

9. From the foregoing analysis, I find that the application is completely misconceived, and I therefore to dismiss it with no orders as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY, VIA MICROSOFT TEAMS THIS 15TH DAY OF OCTOBER, 2021

PATRICK J.O OTIENO

JUDGE

In presence of

No appearance for petitioner

1st applicant present

No appearance for 2nd 3rd and 4th applicants

PATRICK J.O OTIENO

JUDGE