



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 2647 OF 1997
IN THE MATTER OF THE ESTATE OF JAMES WAINAINA
NG'ANG'A ALIAS WAINAINA NG'ANG'A (DECEASED)

RULING

1. Before this Court for determination is the summons for Rectification of Grant dated **16th December 2020**, by which the Administrator **DENHAM THIONGO WAINAINA** seeks the following orders.

“1. That the grant of letters of administration issued to the said DENHAM THIONG'O WAINAINA in this matter on 7th day of October 2015 be rectified in the following aspects as provided for by Rule 43 (1) of the Probate and Administration Rules.

2. The names of the list of beneficiaries indicated in the original schedule to Certificate of Confirmation be amended as in the supporting Affidavit as the said beneficiaries are all Deceased.

(3) That the costs of this application be provided for.”

2. The application was supported by the Affidavit of even date and the further Affidavit dated **4th August 2021** sworn by the Administrator.

3. **MARY WAITHERA MARI** a beneficiary to the estate of the Deceased swore an Affidavit dated **25th June 2021** in support of the summons for Rectification of Grant.

4. However, **FRANCIS KAHUHO WAINAINA, MONICA WARINGA KIMANI, HENRY MUKURIA WANAINA, PETER MUNGAI WAINAINA** and **ELIZABETH NJOKI NJUGUNA** (hereinafter the **Respondents**) who are also beneficiaries to the estate all swore Affidavits in opposition to the summons for Rectification.

5. The summons was canvassed by way of written submissions. The Administrator filed the written submissions dated **4th August 2021** whilst the Respondents relied upon their written submissions dated **13th August 2021**.

BACKGROUND

6. This Succession Cause relates to the estate of **JAMES WAINAINA NG'ANG'A** (hereinafter 'the **Deceased**') who died intestate on **21st March 1989**. The Deceased was survived by **three** widows namely:-

(i) Salome Nyambo Wainaina (Deceased)

(ii) Serah Wanjiku Wainaina

(iii) Salome Wanjiru Wainaina.

The Deceased was also survived by **eight (8)** adult sons.

7. With the Agreement of all the parties the three widows petitioned the court for Grant of letters of Administration. A Grant was issued on **28th July 1996**. Thereafter following the demise of **Salome Nyambo** on **14th June 1998**, the Grant was on **14th June 1998** confirmed in the names of **Serah Wanjiku** and **Salome Wanjiru** only.

8. The estate of the Deceased was said to comprise of only two assets being:-

(i) **Dagoretti/Ruthimitu/21**

(ii) **Dagoretti/Waithaka/561**

9. The widows of the Deceased in whose name the Certificate of confirmed Grant had been issued later also died. Vide a Ruling delivered on **7th October 2015** **Hon Lady Justice Achode** appointed **Denham Thiong'o Wainaina**, a son of the Deceased as the Administrator of the estate to replace the widows of the Deceased. By the present summons the Administrator is seeking to amend that Grant.

10. As stated earlier all the beneficiaries to the estate opposed the Application as they all object to the distribution of any part of the estate of the Deceased to the family of one **NJOROGE NYAMBURA** as proposed in **paragraph (5)** of the Supporting Affidavit dated **16th December 2020**. **Mary Waithera Marii** who filed an Affidavit in support of this summons for rectification of Grant is **not** a child of the Deceased but rather is a member of the family of the said **Njoroge Nyambura**.

ANALYSIS AND DETERMINATION

11. I have considered this summons for rectification of Grant, the Affidavits filed in reply thereto as well as the written submissions filed by both parties. Rectification of Grants is provided for by **section 74** of the **Law of Succession Act, Cap 160, Laws of Kenya** which 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.”

12. **Rule 43(1)** of the **Probate and Administration Rules** states as follows:-

“43(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 of 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.”

13. Rectification is allowed in order to correct a mis-description of a property or to correct a name which has not been fully or properly described in the Grant.

14. I have perused the amendments intended to be made and the rectifications sought to be made by this summons. The amendments sought to be made are central and far reaching as it is proposed to include the family of **Njoroge Nyambura** as beneficiaries of the estate.

15. There is intention to alter not only the beneficiaries to the estate but also the mode of distribution of the estate. This is **not** what was envisaged by **section 74**. Rectification of a Grant is only permissible to cure minor errors, mistakes and irregularities in the Grant. Rectification cannot be used to fundamentally alter the character of the Grant.

16. The question of whether or not the family of **Njoroge Nyambura** are entitled to benefit from the estate of the Deceased is one which is yet to be determined. The remaining beneficiaries vehemently oppose their inclusion as beneficiaries. The Administrator is trying to use this summons for rectification to sneak in the names of disputed beneficiaries.

17. In **RE ESTATE OF CHARLES KIBE KARANJA (Deceased) 2015 eKLR** the Court held as follows:-

“If..... there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.” (own emphasis)

18. I find that the sweeping changes proposed to be made by the summons do not fall under the scope of rectification under **section 74**. By this summons the Administrator is proposing to make fundamental and far reaching changes to the Grant under the guise of rectification. In the certificate of confirmed Grant issued on **18th October 1999** and rectified on **12 October 2004** and farther rectified on **23rd October 2007** the family of **Njoroge Nyambura** were **not** included as beneficiaries to the estate yet the Administrators by this summons seeks to include them as beneficiaries.

19. The Administrator must apply to revoke the original Grant and apply that the same be re-issued with the proposed changes in the mode of

distribution of the estate. The consent of ALL the beneficiaries must be obtained once again.

20. In conclusion, I find no merit in this application. The summons for rectification of Grant dated **16th December 2020** is dismissed in its entirety. This being a family matter each side will meet its own costs.

DATED IN NAIROBI THIS 26TH DAY OF NOVEMBER 2021.

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MAUREEN A. ODERO

JUDGE