



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERUGOYA
SUCCESSION CAUSE NO. 120 OF 2013
IN THE MATTER OF THE ESTATE OF NGERECA NDUKU ALIAS
NGERACHA NDUKU (DECEASED)

NJOKA MUTUANENE.....**APPLICANT**

-VERSUS-

STANLEY GACHOKA GICHIRA.....**1ST RESPONDENT**

ALICAP MUNENE KURUTA.....**2ND RESPONDENT**

ESTHER KABUI KURUTA.....**1ST PROTESTOR**

JEMIMAH WAMBURA KURUTA.....**2ND PROTESTOR**

JULIA KOLI KURUTA.....**3RD PROTESTOR**

NATHAN KARIUKI GICHINGA.....**4TH PROTESTOR**

FRANCIS KANGANGI GICHINGA.....**5TH PROTESTOR**

FRANCIA MICERE GICHINGA.....**6TH PROTESTOR**

J U D G M E N T

1. This cause relates to the Estate of the late Ngereca Nduku alias Ngeracha Nduku who died intestate on 7th May 1988. A grant of representation in the said estate was issued on 3rd November 2006 and confirmed on 30th October 2018. The grant had been issued to Alicap Munene Kuruta, Njoka Mutuanene, and Stanley Gachoki Gichira. The said grant was however revoked on 16th June 2015. Consequently, a fresh grant of letters of administration was consequently granted to Morris Mutuanene Njoka on 20th September 2017 and the same was issued on 12th October 2017.

2. The Applicant herein has now moved this court vide summons for confirmation of grant dated 7th February 2018 and amended on 22nd July 2019. The Applicant seeks for orders THAT:

a. Spent.

b. This honourable court be pleased to amend and/or rectify the grant of letters of administration intestate issued on 20th September 2017 to read the names of the administrator as Njoka Mutuanene and not Morris Mutanene Njoka.

c. This honourable court be pleased to confirm the grant issued on 20th September 2017 to the Petitioner, Njoka Mutuanene.

d. The costs of this application be paid out of the estate.

3. The application is premised on the grounds on the face of it and is supported by the affidavit of Njoka Mutuanene sworn on 22nd July 2019. These are:- The grant was issued on 20/9/2017 and no application for provision of dependant is pending. It also seeks to correct errors of names of the administrator. The application stated to be brought under the provisions of **Sections 71(3) and 74** of the **Law of Succession Act** (the “Act”) and **Rules 43 and 73** of the **Probate and Administration Rules** (the “Rules”).

4. Vide an Affidavit of Protest sworn on 12th August 2016 and filed on 15th August 2016 by Francis Kangangi Gichinga on behalf of the families of the beneficiaries, the protestors allege that the administrator herein went to court without their authority and knowledge and misled the court on who are the beneficiaries of the subject estate.

Issues arising for determination

5. The following are the main issues arising for determination:

- a. Whether the grant of letters of administration issued on 20th September 2017 should be rectified; and
- b. Whether the grant issued on 20th September 2017 should be confirmed.

Analysis

a) Rectification of the Grant

6. **Section 74** of the **Law of Succession Act** provides as follows:

“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court.”

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

“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.”

8. **In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR** the court expressed itself as follows with regard to the issue of rectification of grants;

“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 of 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...”

9. In this case, the Applicant seeks to rectify the name on the grant of letters of administration intestate granted on 20th September 2017 to read Njoka Mutuanene in place of Morris Mutanene Njoka.

10. I have perused the pleadings filed in this cause. In the application filed on 14th January 2014 for revocation of the previous grant that was confirmed on 30th October 2013, the Applicant was referred as “Morris Mutuanene Njoka”. The affidavit in support of the said application was also sworn by the said “Morris Mutuanene Njoka”.

11. One Jemimar Wambura Kuruta then brought objection proceedings vide a Notice of Motion application filed on 25th September 2015. She alleged that Njoka Mutuanene is the father to one Morris Mutuanene Njoka. She further alleged that the Applicant herein sold his share of the estate to one Morris Muriithi Munene before the grant was confirmed. She thus took issue with exchange of names in the said application alleging that the Applicant did the same deliberately to create chaos and confusion and hide the sale of a share of the estate.

12. In response to those allegations, the Applicant herein swore an affidavit on 7th March 2016 confirming that the aforementioned application for revocation of the previous grant was expressed to have been brought by Morris Mutuanene Njoka, who is his son. He termed the mix up of names as a topographical error.

13. Rectification of grant applies to correct errors which can be done without affecting the substance of the grant. These are errors in names, descriptions or on setting out the time and place of the deceased death or the purpose of a limited grant. The question that is therefore pending for this court to determine is whether correcting the names on the subject grant from “Morris Mutuanene Njoka” to “Njoka Mutuanene” will affect the substance of the grant.

14. It is clear that the two names do not refer to one and the same person. The Applicant herein has previously acknowledged the change of the names as an error by his advocates since his son is not a party in this cause and has never been involved in the matter. In my view, the rectification of the name is a correction of an error which is envisaged under **Section 74 of the Act and Rule 43 of the Rules**. Mistakes of counsel should not be visited upon an innocent litigant. As such, I opine that in the interest of justice, the name of the administrator in the grant issued on 12th October 2017 can be rectified as prayed.

b) Confirmation of the Grant

15. The properties comprising the estate of the deceased include:

a. Mwea/Teber/B/106

b. Kirinyaga/Gathigiriri/586

16. According to the Applicant, the deceased was survived by:

- i. Alicap Munene Kuruta - Brother
- ii. Njoka Mutuanene - Brother
- iii. Stanley Gachoki Gichinga - Brother
- iv. Elias Mangu Munene - Nephew

17. The Applicant herein has in his affidavit in support of the summons for confirmation of grant sworn on 22nd July 2019 proposed the distribution of the deceased's estate as follows:

a. Mwea/Teber/B/106

- i. Alicap Munene Kuruta)
- ii. Njoka Mutuanene)
- iii. Stanley Gachoki Gichinga)- equal shares
- iv. Elias Mangu Munene)

b. Kirinyaga/Gathigiriri/586

- i. Alicap Munene Kuruta)
- ii. Njoka Mutuanene)
- iii. Stanley Gachoki Gichinga)- equal shares
- iv. Elias Mangu Munene)

Protestors' case

18. The Protestors opted to rely on their Affidavit of Protest sworn by Francis Kangangi Gichinga on 12th August 2016.

19. The Protestors, in their written submissions, took issue with the fresh grant being issued to "Morrison Mutuanene Njoka" and not "Njoka Mutuanene" noting that the two names do not refer to one and the same person. As clarified herein above, the reference to the Applicant as "Morris Mutuanene Njoka" was an error that can be rectified as prayed in the present application.

20. On the issue of the mode of distribution, the Protestors did not submit on this but only went on to challenge how the Applicant allegedly revoked the first grant and introduced a stranger as an administrator of the deceased's estate. The court record shows that the previous grant stands revoked, and those court orders have not been challenged at this point. In addition, the Applicant herein obtained a fresh grant of letters of administration to the estate which grant has not been revoked.

21. Confirmation of grants in probate causes is provided for in **Section 71** of the **Act** which stipulates as follows:

"71. Confirmation of grants

(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets."

22. Under **Section 71** of the **Act**, an administrator is enjoined to apply for confirmation of his grant after expiration of six months from the date the grant was made to him. The provision is in mandatory terms. According to **Kamau J** in **In the Matter of the Estate of Gachunga Gachamba (deceased) Nairobi HCSC No. 642 of 2000** the application for confirmation of a grant is a mandatory requirement of law and

without it any confirmed grant would be void to the extent of the confirmation.

23. The court upon the application for confirmation being made may confirm the grant or, if not satisfied that the applicant will properly administer the estate issue a confirmed grant to another person or persons or order the postponement of the confirmation. **Section 71(2)(a)** of the **Act** and the proviso to subsection (2) state as follows:-

“(2)The court to which application is made, or to which any dispute in respect thereof is referred, may –

(a) If it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or...

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities of the all persons beneficially entitled: and when confirmed the grant shall specify all such persons and their respective shares.”

24. Paragraph 12 of the affidavit of protest suggests that the deceased’s estate be shared equally amongst:

- a. The family of Njoka Mutanene,
- b. The family of Kuruta,
- c. The family of Gichira, and
- d. The family of Norman Magu

25. In my view, the protestors have not challenged the beneficiaries who survived the deceased. Given that the properties comprising the estate of the deceased is also not in dispute, I thus opine that the deceased’s estate should be distributed as proposed by the Applicant.

Conclusion

26. In view of the foregoing, it is my view that the grant of letters of administration granted to the Applicant on 20th September 2017 and issued on 12th October 2017 should be confirmed as per paragraph 10 of the Applicant’s affidavit in support of the Amended Summons for Confirmation of Grant filed on 22nd July 2019. I therefore allow the application as prayed.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 20TH DAY OF DECEMBER 2021.

L.W. GITARI

JUDGE

20/12/2021

The Judgment has been read out in open court.

L.W. GITARI

JUDGE

20/12/2021