



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

SUCCESSION CAUSE NO. 160 OF 2002

IN THE MATTER OF THE ESTATE OF WAMUCEKE WERERI OVORO (DECEASED)

ENDITA RWAMBA.....APPLICANT

VERSUS

RUCIMIRIA MARIGU.....ADMINISTRATOR

R U L I N G

A. Introduction

1. This is a ruling for the summons for rectification of grant dated 16th August 2019 in which the applicant seeks for orders that land LR. No. Gaturi/Nembure/5192 be registered in her name and further that she be substituted for the administrator herein.
2. It is submitted that whilst listing the deceased's assets, land LR. No. Gaturi/Nembure/5192 was omitted from the proceedings. Further, the applicant states that the family has agreed that she be appointed as administrator of the deceased's estate as the administrator has become adamant and refused to cooperate.
3. The applicant further states that there was an error on the register of land parcel No. Gaturi/Nembure/368 which was the original number whereby the name of the deceased was entered in the mutation instead of that of the administrator.
4. The applicant further states that her sisters are not interested in getting their shares but that with her, she is interested in pursuing her share.

B. Analysis & Determination

5. This application is premised on Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules. Section 74 provides for the errors on grants of representation that may be rectified by the court. It provides: -

“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; and the grant of representation whether before or after confirmation, may be altered and amended accordingly”.

6. The procedure for seeking the relief is set out in Rule 43 (1), which echoes Section 74 of the Law of

Succession Act. **Rule 43(1)** says: -

“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 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.....”

7. The provisions of the Law of Succession Act and the Probate and Administration Rules is not analogous to the provisions in the Civil Procedure Rules on amendment of pleadings. The amendment provisions in Order 8 of the Civil Procedure Rules are extremely broad, and are not at all comparable to what Sections 74 and Rule 43 provide. The provisions in Section 74 and Rule 43 are extremely restricted. They permit rectification of grants in three clearly defined cases: -

(a) errors in names and descriptions of persons or things;

(b) errors as to time or place of death of the deceased;

(c) in cases of a limited grant, the purpose for which such limited is made;

8. The power to rectify a grant is limited to three situations or circumstances set out in Section 74.

9. The matter in issue in this case is the omission of land parcel No. Gaturi/Nembure/5192 from the succession proceedings and eventually from the grant. When the administrator filed the petition for grant of letters of administration she did not list this property in the schedule of assets. It is alleged that when the administrator sought confirmation of grant, she did not include this property among the assets that were to be shared.

10. The respondent has not explained why the aforementioned property was not listed. I believe that this is a matter which only the administrator can explain. The applicant states that the property should be registered in her name as her sisters are not interested in it. She further states that she the family has agreed that she be appointed the administrator of the estate although no affidavit of any of the beneficiary to the at effect has been annexed to the summons.

11. For the purposes of Section 74 and Rule 43, an error relates 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. In this case it cannot be said that the property was omitted by error or mistake. In my view, the omission of the property is a matter that does not fall under the purview of Section 74 of the Law of Succession Act.

12. The other issue is that the applicant seeks to be substituted as the administrator in this cause just for the purpose of taking the parcel allegedly omitted in these proceedings for herself. It is my considered view that the proper way to replace the administrator in genuine cases is to apply for revocation of the grant. It has not been shown that there is any need to appoint another administrator at this late stage of the proceedings.

13. The applicant is just a beneficiary in the estate of her mother Wamucheke Wareri Ovoro and not an administrator. In my view, she has no legal capacity to file an application for rectification of grant. The administrator is still available and ought to have filed this application. Perusal of this file reveals that this application was not served on the administrator or on other beneficiaries.

14. In regard to property registered in the deceased's name and which was not included in the grant, the administrator ought to apply for review or amendment of the grant and is required by law to involve all the beneficiaries so that they decide on the issue of distribution.

15. I find that this summons for rectification of grant is not properly before the court and is hereby struck out with no order as to costs.

16. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF JANUARY, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for Ithiga for Respondent

Applicant present in person