



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 870 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH MUGUKU MANJUA (DECEASED)

MARY WANJIRU MUGUKU

SIMON MAINA MUGUKU..... APPLICANTS/ADMINISTRATORS

RULING

1. The application before me is the Summons for Rectification of grant dated 18th January, 2019. It is brought under **Section 74** of the **Law of Succession Act**.

It seeks orders;

- 1. THAT the Grant of Letters of Administration Intestate confirmed on 30th June, 2014 be rectified to amend the distribution of the estate as per the consent annexed to the supporting affidavit.**
- 2. THAT this succession Cause Number be rectified to read 870/2012 instead of 870/2013.**
- 3. THAT the costs of the application be in the cause.**

2. It is based on grounds of the face of the application;

- a) THAT NAKURU MUNICIPALITY PLOT NO. 12250/297 be distributed to reflect a 1/3 share equally between Mary Wanjiru Muguku and Simon Maina Muguku instead of a full share.
- b) THAT some properties were left out during confirmation of the grant viz: Plot No. 209/2820/26 Parkroad, Nairobi and Plot No. 36/1/173 Eastleigh, Nairobi.
- c) THAT it is in the interest of Justice that this application be granted to protect and sustain the interest of the applicant, and the supporting affidavit sworn by Mary Wanjiru Muguku and Simon Maina Muguku.

3. The application is opposed by an affidavit of protest sworn by Michael Kinyari, the Chairman of the interested party Mbari ya Kimeru Self Help Group, there is also a further affidavit by the 2nd Respondent, Simon Maina Muguku and a response by Charles Thiong'o Kimeru, the secretary of the interested party/protestor, who is also the 3rd respondent.

4. Are these prayers tenable? I have considered the affidavits, and the law.

5. **Section 74** of the **Law of Succession Act** states; **Errors may be rectified by court:**

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

It provides for the rectification of;

- Names and descriptions

- Time and place of deceased's death
- Purpose of limited grant

That is all.

6. The Summons before me is about the distribution of the estate of the deceased, nowhere is the court being asked to correct any error. A reading of **rules 43** of the **Probate and Administration Rules** which states:

Rectification of grant

(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.

(2) Unless at the time of issue of the summons the registrar otherwise directs, there shall be filed with the summons an affidavit in Form 13 by the applicant containing such information as is necessary to enable the court to deal with the matter.

(3) The summons, together with the affidavit (if any), shall without delay be laid by the registrar before the court which may either grant the application without the attendance of any person or direct that it be set down for hearing on notice to the applicant and to such other persons (if any) as the court shall think fit. (Emphasis added)

Subsection (3) shows that an application for rectification is not expected to be contested, because it is there to correct an error on the face of the record.

7. We have, strangely, in response to the Summons for Rectification of Grant, an affidavit of protest. A protestor means a person who has filed a protest under **rule 40(6)** against the confirmation of a grant. **Rule 40 (6)** of the **Probate and Administration Rules** states;

“ 40 (6) Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection”.

8. The purpose of a protest is to object to the confirmation of the grant. Confirmation proceedings come when the specific beneficiaries and their specific shares have been identified. In this case that has already been done. The applicants are seeking redistribution of the estate via the summons for rectification of the grant, which explains why there is a protest.

9. Without going into the merits of the application, it is clear, on both points the application is incompetent, and an abuse of the court process. It is seeking the substantive order to redistribute the estate, an action that cannot be described as an error on the face of the record. One cannot say there was a mis-description of the assets of the estate, or of any beneficiary or the date of death of the deceased. The record will show that this matter is highly contested, hence the protest. That is why the prayer for redistribution is untenable. It can only be denied and in its tumbling, it carries with it the protest.

10. Prayer (2) is properly before me and the same is allowed.

11. The summons is allowed only in terms of prayer no. 2: the error in description of the cause is corrected to read **870 of 2013**.

12. Each party to bear its own costs.

Dated, Delivered and signed at Nakuru this 27th day of February, 2020.

Mumbua T. Matheka

Judge

In the presence of:

Edna Court Assistant

Mr. Bosire holding brief for Mrs Gatei for applicant/administrator

Charles Thiong'o

At 2.00 p.m.

Ms Githae for 1st and 2nd respondent

