



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 862 OF 2013

IN THE MATTER OF THE ESTATE OF KANYINGI GATWE (DECEASED)

AND

ANTONY DAVID MUCIRI KANYINGI APPLICANT

V E R S U S

AMOS NJOGU KANYINGI 1ST OBJECTOR

ROSE KABIA KANYINGI 2ND OBJECTOR

PAULINE WANGUNDI KANYINGI 3RD OBJECTOR

CATHERINE WANJIKU KANYINGI 4TH OBJECTOR

RULING

1. The applicant Anthony David Muchiri filed the application dated 26/4/2018 under Section 74 of the Law of Succession Act. He seeks rectification of the names to read:-

- **Anne Wawira Gachoki**
- **Grace Waruguru Njogu**
- **Daina Evangeline Wanjiru Mwatha.**
- **Jackline Wanjiku Gachoki.**

2. He was further seeking an order that various accounts which are listed under Para -3- of the application be included in the schedule of deceased's properties and the same be distributed as per attached schedule of distribution. These accounts are:-

- **Account No. [.....] with Fortune Sacco, Kerugoya Branch.**
- **Account No. [.....] with Fortune Sacco Kimunye Branch.**

- Account No. KTGBS [.....] with Bingwa Sacco Kimunye Branch.

- Share Certificate No. [.....] with M/s Mutige Kiboti Co. Ltd.

- [.....] with Co-operative Bank of Kenya.

- [.....] with Kimunye Tea Factory Co. Ltd.

- [.....] with Kimunye Tea Factory.

- [.....] with Kabare Farmers.

- Shares with Gatugura United Co. Ltd.

- Shares with Gichugu Housing –Kianyaga.

- Shares with Bingwa Sacco Ltd Kimunye Branch, which were also estates of the deceased person be included in the schedule of the deceased's property and the same be distributed as per attached schedule of distribution.

3. The application is based on ground that the accounts were left out when the grant was confirmed.

4. The respondent did not oppose the application for rectification of grant. They have however opposed the prayer for review of the grant to include the various accounts.

5. In an affidavit sworn by Amos Njogu Kanyingi on 18/10/2018 he depones that it is true that the grant was confirmed and the applicants had moved the court vide another application dated 22/11/2016 which was dismissed. He depones that prayer -2- be allowed so that the name of 3rd respondent be rectified to read Pauline Margaret Wangundi Kanyingi and that of 4th respondent to read Catherine Mercy Wanjiku Kanyingi.

6. With respect to Account No. [.....] with Fortune Sacco Kimunye, it is not in the name of deceased and is not supposed to be distributed in this estate.

7. In a further affidavit, the applicant submits that some of the siblings changed the account of the deceased to read their names. He sought advice from Mutige Kiboti Company and were advised to open another account which they did in the names of Catherine Mercy Wanjiku (being one of the siblings) opened an account at Kimunye Fortune Sacco No. [.....] on behalf of the family. After the death of Alice Muthoni their mother, Catherine Mercy Wanjiku now claims the account belongs to her. That the District Officer Kianyaga ordered the account to revert to the deceased. That the cheques for dividends are sent to that account.

8. In response, the respondent Amos Njogu Kanyingi in a further Replying Affidavit annexed a letter ANKI confirming that Account No. [.....] is in the joint names of Alice Kanyingi (deceased) and Mercy Kanyingi and cannot be the subject of this estate.

9. I have considered the application. From the on set I allow prayer No. -2- in as far as relates to rectification of names. This is provided under **Section 74 of the Law of Succession Act** which gives the court jurisdiction to correct errors in names and descriptions or in setting out the time and place of deceased's death, or purpose in limited grant which maybe rectified by the court, altered or amended accordingly. The court can therefore order corrections of errors or mistakes which will not affect the substance of the grant.

10. With regard to prayer No. -3- to include the accounts which have been stated, the respondent have shown that Account No. [.....] with Fortune Sacco Kimunye Branch is not in the name of the deceased, Annexure AMK-1-. At Para 11 of the applicant's further affidavit he has deponed Account No. [.....] is in the names of Amos Njogu. This is a succession matter which is governed by the Law of Succession Act. It is an intestate succession which seeks to administer the estate of the deceased. **Section -3- of the Law of Succession Act** defines estate to mean "*the free property of a deceased person.*"

Further **Section 2(1) of the Act** provides:-

“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.”

11. Simply stated, this court can only deal with properties which are registered in the name of the deceased as they are the ones which forms his ‘**estate**’ as defined under the Act.

12. There is no dispute that the grant was confirmed on 18/6/16 and the estate was distributed equally among the beneficiaries. I find that properties which are not in the name of the deceased cannot form part of his estate. This court lacks jurisdiction to deal with matters deponed at Paragraph 11 of the applicants further affidavit in as far as they relate to properties which do not belong to the estate. The prayers are misconceived as they were not made in the application. The applicant has not proved with any documentary evidence the allegations which he has made in the application and the affidavit. For these reasons prayer -3- on the application is without merits.

13. I order as follows:-

- 1. The application for the review of the grant is dismissed.**
- 2. Prayer -2- on the application is allowed and the names may be rectified as prayed.**
- 3. Prayer -3- on the application is dismissed.**
- 4. Each party to bear its own costs.**

Dated at Kerugoya this 30th day of April 2020.

L.W. GITARI

JUDGE