



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1011 OF 2007

IN THE MATTER OF THE ESTATE OF MARTIN OTIENO OBER (DECEASED)

RULING

1. The deceased herein died intestate on 2nd February 2007 leaving behind; a widow by the name of Edith Namulanda, COO a son then aged 5 years, CO a son then aged 2 years old, AOW (mother) and Francis Oduor Ober (brother) as survivors.
2. On 2nd April 2007, Edith Namulanda Barasa and Francis Oduor Ober petitioned for a grant of representation. The same was granted jointly to the two on 3rd August 2007.
3. Among the properties listed as comprising the estate were, Nairobi/Block 82/2140 Tena Estate, KAQ 519T Nissan B14, Life Insurance claim from CBK Scheme, Banki Kuu Sacco Shares, Death Gratuity from CBK Pension Fund.
4. On 6th August 2008, the grant was confirmed and estate shared out as follows;
 - (i) **Nissan Sunny B14 and 20% Life Insurance claim from CBK Scheme and CBK Pension Fund to Edith Namulanda Barasa.**
 - (ii) **10% Life Insurance claim from CBK Scheme and CBK Pension Fund to Apelles Ober Wambundo.**
 - (iii) **70% Life Insurance claim from CBK Scheme and CBK pension fund at Nairobi/Block 82/2-40 – Tena Estate to Edith Namulanda Barasa and Francis Oduor Ober in trust for Cyril Oduor Ober (minor).**
 - (iv) **70% Life Insurance claim from CBK Scheme and CBK Pension Fund and Nairobi/Block 82/2.40 - Tena Estate to Edith Namulanda Barasa and Francis Oduor Ober in trust for Chris Ochieng (minor).**
5. Vide Summons for Rectification of Grant dated 14th May, 2020 filed pursuant to section 47 and 76 Law of Succession Act, Rules 43 and 73 of the Probate and Administration Rules, Edith Namulanda Barasa the 1st administrator sought rectification of the grant on grounds that Francis Oduor Ober one of the administrators has since died and therefore hindering completion of the administration of the estate. A copy of the death certificate was attached as proof of his death (see Annexure E2).
6. The applicant sought distribution of an asset known as Investments in Kingdom Securities Account Nos. xxxx, xxxx and xxxx which are to be held by the applicant in trust for Ober (minor) and CO (minor).
7. The application is grounded on the facts set out on the face of it and an affidavit sworn on 14th May 2020 by the applicant. Basically, the application is seeking the removal of the deceased co-administrator from the grant so that the applicant can administer the grant alone. She also wants to distribute investments in Kingdom Securities accounts.
8. According to Mr. Wachakana counsel for the applicant, the applicant will assume the duties of an administrator alone and then distribute and hold property acquired for the benefit of the estate after confirmation of the grant.
9. I have considered the application herein, affidavit in support and oral submissions by counsel for the applicant. The application herein is brought under Sections 47 and 74 of the Law of Succession. Section 47 deals with court's jurisdiction which is not in dispute. Regarding Section 74 of the Law of Succession, it deals with rectification of errors. in a grant. This provision only addresses errors in names, and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in limited grant. Such errors can be altered or amended.

10. In this case there is no error envisaged under Section 74 of the Act or Rule 43 of the Probate and Administration rules quoted by the applicant. Basically, the grant requires amendment and review so as to redistribute undistributed property and replace the deceased administrator with another one owing to the existence of a resulting trust arising out of the minors as beneficiaries.

11. Since one administrator is deceased and there are beneficiaries who are still minors, the need to have more than one administrator is still relevant pursuant to Sections 58, 66 and 81 of the Law of Succession.

12. For the above reasons stated, it is my finding that the application is not merited and the prayers sought cannot issue. The applicant to make an application on amendment and review of the grant pursuant to Section 58 and 81 of the Law of Succession for appointment of a co-administrator in place of the deceased administrator and thereafter seek to include unlisted assets in the list of assets and then propose on how to distribute the same with the consent of other beneficiaries. Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JUNE 2020.

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J. N. ONYIEGO

JUDGE