



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1189 OF 2018

IN THE MATTER OF THE ESTATE OF PHILIPINE VALARY MAYIAH (DECEASED)

RULING

1. Before me is an application brought by the two administrators for rectification of grant of letters of administration dated 26th February 2020 seeking orders that the grant issued and confirmed on 3rd December 2019 be rectified as follows: -

(a) Beatrice Nyongesa Barasa Identity Card No. 6675745 and of P. O. Box 216 Busia be added as an administrator (trix).

(b) The following people be included as beneficiaries:

- ***Beatrice Nyongesa Barasa, identity card No. 6675745 and of P. O. Box 216, Busia.***
- ***Alphonse Mang'eni Mayiah identity card No. 0103593 and of P. O. Box 615, Busia.***
- ***Collins Wandera Okanda identity card No. 35037426 and of P. O. Box 216, Busia.***

(c) The current administrators(trix), EDWIN ORONO OSAMONG and LILLIAN APADET OSAMONG shall be in charge of 50 percent of the estate while Beatrice Nyongesa Barasa shall be in charge of the other part.

2. The application was filed with an affidavit sworn jointly by the two administrators on 26th February 2020 wherein it was deponed that some beneficiaries, that is Beatrice Nyongesa Barasa – mother, Alphonse Mang'eni Mayiah – father, and Collins Wandera Okanda – brother of the deceased had been erroneously left out.

3. It was also deponed that Beatrice Nyongesa Barasa was proposed to be an additional administrator and would be in charge of 50% of the deceased's estate.

4. A consent to the proposed rectification of grant of letters of administration signed by Edwin Orono Osamong, Lillian ApanDET Osamong, Beatrice Nyongesa Barasa, Alphonse Mang'eni Mayiah and Collins Wandera Okanda dated 26th February 2020 was filed.

5. This is an application for rectification of grant of letters of administration intestate, which is governed by Section 74 of the Law of Succession Act (*Cap. 160*), which provides as follows –

“74. 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. In addition to the above statutory provisions, Rule 43(1) of the Probate and Administration Rules, which is the implementing rule for Section 74 of the Act provides as follows –

“43(1) Where the holder of a grant seeks pursuant to 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.”

7. In the present case, the two administrators have made the present application in the same cause and stated that there was an error in not including some beneficiaries, whose relationship to the deceased has been disclosed in the application. The administrators stated that there was also an error in the mode of distribution of the assets, and asked that both errors be rectified by the court.

8. The grant of letters of administration herein has already been confirmed. I note that there is no objection to the proposed rectification of

grant as the two administrators and all other interested parties have signed and filed a written consent to the same.

9. In my view therefore in terms of Section 74 of the Law of Succession Act, this court is entitled to exercise its jurisdiction to rectify the grant of letters of administration herein.

10. I thus allow the application and order as follows –

1. Both the initial grant and confirmed grant of letters of administration herein are hereby rectified to include a third administrator Beatrice Nyongesa Barasa.

2. Beatrice Nyongesa Barasa, Alphonse Mang'eni Mayiah and Collins Wandera Okanda will be included as beneficiaries in the estate herein.

3. The distribution of assets of the deceased will be as follows:

(a) The current administrators Edwin Orono Osamong and Lillian Apadet Osamong will hold 50% of the estate jointly in trust for the minor.

(b) 50% of the estate will be held by Beatrice Nyongesa Barasa.

4. Rectified certificates of grant of letters of administration to issue accordingly.

Dated and delivered at Nairobi this 26th day of October, 2020.

George Dulu

JUDGE