



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISCC. SUCCESSION CAUSE NO. 25 OF 2014

In the Matter of the Estate of Paul Kiunga (Deceased)

CHARLES KABURIA KIUNGA PETITIONER

RULING

Rectification of limited grant

1. Before me is a Summons dated 16th July 2018 expressed to be brought under **Section 1 (a) of the Civil Procedure Act and Article 249 of the Constitution and any other enabling provisions of the law**. The applicant is asking this honorable court to set aside its order in which it dismissed an application for rectification of an error in the limited grant *ad litem*. The rectification that had been sought was the purpose of the limited grant *ad litem* to read..for purposes of a decree in the Chief Magistrate Court of LDT No. 5 of 2001 for recovery of ½ acre piece of land from LR NO. NYAKI/KITHOKA/MWANIKA/64.

2. The grounds of the application as set out in the application and supplementary affidavit sworn by Charles Kaburia Kiunga sworn on 3rd July 2018 include:

1. The application for rectification of a decree in the chief magistrate court LDT No. 5 of 2001 was dismissed because of an error apparent on the face of the limited grant *ad litem*.

2. That he shall suffer irreparable loss and damages unless the dismissal order of application dated 28th May 2018 is set aside for purposes of filing application for rectification of Chief Magistrate decree of LDT No. 5 of 2001.

3. A small rendition on limited grants. Section 54 of the Law of Succession Act provides:

“A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

4. *Fifth Schedule (14) provides:-*

“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.”

5. **In re the estate of Helena Wangechi Njoroge (Deceased) (2015) eKLR** it was stated of letters of administration ‘*ad litem*’ that;

“It was limited to the purpose of filing suit to preserve the three assets of the estate. It is what is called a grant of letters of administration *ad litem*. The suit envisaged to be filed on the strength of a grant *ad litem* is not a probate or succession case, or an interlocutory application within a probate or succession cause, but rather a civil suit. Indeed, one need not obtain a grant of any sort to enable him file a succession cause. A grant of representation is only necessary where one intends to file a civil suit to protect or defence the estate against third parties.”

6. A limited grant of letters of administration *ad litem* is therefore made usually when the estate of a deceased person is required to be represented in court proceedings. Notably, however, limited grant is made due to the exigencies of matter; urgent need to file or join or defend suit on behalf of the estate, and which cannot wait until full grant is obtained. Of course, the process of obtaining full grant may be

lengthy and protracted.

7. Applying the test, the limited grant letters was initially issued in relation to HCCA No. 25 of 2001 instead of LDT No. 5 of 2001. HCCA No. 25 of 2001 is non-existent. It is apparent that the correct proceedings subject of the limited grant is LDT No. 5 of 2001 which is still pending in court. The deceased is a party in the latter mentioned suit and is not represented. The suit relates to estate property which need be collected and preserved. Accordingly, I am satisfied that I should exercise my discretion in favour of setting aside the dismissal order herein.

8. For completeness of record, the purpose in a limited grant may be rectified by the court. See section 74 of the Law of Succession Act which provides that:-

74. Errors may be rectified by court 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. [Underlining mine]

9. In the upshot, I order:

a) That the order dismissing the application for rectification of the limited grant *ad litem* dated 5th March 2018 is set aside.

b) The limited grant *ad litem* issued on 17th February 2014 be rectified and or amended to reflect it has been issued for the purpose limited to representing the deceased in LDT No. 5 of 2001 in the chief magistrate court at Meru.

Dated signed and delivered in open court at Meru this 21st day of February, 2019

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F. GIKONYO

JUDGE

IN PRESENCE OF

Applicant -present

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F. GIKONYO

JUDGE