



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 579 OF 2009

IN THE MATTER OF THE ESTATE OF M'MWIRICHIA alias MWIRICHIA MWIRICHIA (DECEASED)

MARTHA KAILU M'MWIRICHIA ADMINISTRATOR/APPLICANT

VERSUS

HENRY M'MIAKA M'MWIRICHIA RESPONDENT

R U L I N G

1. This is a ruling on summons for rectification of a grant dated 4th April, 2019. The same is brought pursuant to *Section 74 of the Law of succession Act and Rules 43 and 73 of the Probate and Administration Rules CAP 160 of the Laws of Kenya.*

2. The applicant seeks the rectification of the certificate of confirmation of grant issued to on 11th July, 2011 as follows:-

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- | | | |
|-------------------------------|---|------------|
| a) Joseph Chokera M'Mwirichia | - | 0.44 acres |
| b) Jacob M'Mariu Mwirichia | - | 0.44 acres |
| c) Henry M'Miaka M'Mwirichia | - | 0.44 acres |
| d) Martha Kailu M'Mwirichia | - | Balance |

3. The grounds upon which the application was grounded were set out in the body of the application and the supporting affidavit of **Martha Kailu M'Mwirichia** sworn on 4th April 2019. It was contended that after the surveyor went to the ground, it was confirmed that if the land was subdivided as per the grant, the administrator would not get a portion since the land is not big enough. This is because of the road reserve that measures 0.20 acres which would mean there will be no balance for her to get once her sons get their share.

4. The application was opposed by **Henry M'Miaka M'Mwirichia** vide his affidavit sworn on 9th May, 2019. He deponed that the petitioner, who is the sole administrator had refused to effect the grant it for seven years. That she never took any steps until his advocate demanded action against her vide a letter dated 4th February, 2019. The mode of distribution from the grant was clear as the petitioner was to get the balance of the respective shares they got. It was agreed that each beneficiary was to surrender 0.05 acres for the road reserve which is in use to date. That the application should be dismissed with costs and his application dated 18th February 2019 be allowed.

5. *Section 74 of the Law of Succession Act* provides:-

“Errors in names and descriptions, or in setting fourth 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. Further *Rule 43 (1) of the Probate and Administration Rules* provides:-

“(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.”

7. In The Matter Of The Estate Of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] eKLR, it was held:-

“The law on rectification or alteration of grants is Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules. ... What these provisions mean is that errors may be rectified by the Court where they relate to names or descriptions, or setting out of the time or place of the deceased’s death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.

...

Where a proposed amendment of a grant cannot be dealt with under the provisions of section 74 of the Law of Succession Act, the applicant ought to approach the court under order 44 of the Civil Procedure Rules. A review under order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the Court under this provision – Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”

8. In view of the foregoing, rectification under **section 74 of the Act and Rule 43 of the Rules** is only limited to errors in respect of names, descriptions or in the setting out the time or place of deceased’s death. Any ground for rectification has to be by way of review which will be based on discovery of new and important matter or on account of some mistake or error apparent on the face of the record or for any sufficient reason.

9. In the present case, the applicant sought to amend the mode of distribution allegedly because after engaging her surveyor, she discovered that she would not be able to get anything after the other beneficiaries have been given their share due to the road reserve measuring 0.20 acres.

10. Evidently, this cannot be categorized as an error that can be rectified by this court as stipulated under **Section 74 of the Act and Rule 43 of the Rules**. Further, there are no sketch plans by the alleged surveyor to buttress the allegations made by the applicant.

11. Accordingly, I am of the view that the application is unmeritorious and I dismiss the same. I will make no order as to costs.

It is so ordered.

DATED and DELIVERED at Meru this 30th day of May, 2019.

A. MABEYA

JUDGE