



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO.472 OF 2004

IN THE MATTER OF ESTATE OF SOPHIA WATARE GACHIGUA (DECEASED)

BEATRICE GAKENIA MBUGUA.....1ST PETITIONER/APPLICANT

ROSE MUMBI NDUNG’U.....2ND PETITIONER/APPLICANT

BETWEEN

EPHRAIM MWANGI GACHIGUA.....RESPONDENT

RULING

1. What is before me are three applications: -

- i) Summons General for Rectification of Certificate of confirmed grant under section 74 of the Law of Succession Act 2010 dated 8th May 2018.
- ii) Summons General under Rule 73 of Probate and Administration Rules dated 26th July 2018.
- iii) Summons General under section 45(1) (2) (a)(b) and rule 73 of the Succession Act dated 24th July 2018.

2. The Summons for Rectification of Grant was provoked by the judgment of Mativo J delivered on 24th November 2016

3. The Summons General dated 24th July 2018 and 26th July 2018 are two applications by beneficiaries/administrators each accusing the other of intermeddling with the estate.

4. The one dated 26th July 2018 and filed on 26th July 2018 the parties are;

EPHRAIM MWANGI GACHIGUA.....APPLICANT

VERSUS

BEATRICE GAKENIA MBUGUA.....1ST RESPONDENT

ROSE MUMBI NDUNG’U.....2ND RESPONDENT

5. It seeks orders:

i. **THAT** this application be certified urgent and the same be heard at the first instance *exparte*.

ii. **THAT** the respondent be ordered be **account** for the rent proceeds collected from Plot No.L.R No.Konyu/Baricho/2133 and coffee collected from the said L.R No.Konyu/Baricho/2133 from the year 2004 to date and also be ordered to deposit all such proceeds of rent collected from L.R No.Konyu/Baricho/2133 and coffee collected from the said L.R No.Konyu/Baricho/2133 in the bank account of the estate for purposes of the distribution by the administrator.

iii. **THAT** orders do issue directed to all the tenants of LR No.Konyu/Baricho/2133 in the bank account of the estate for purposes of the distribution by the administrator.

iv. **THAT** the 1st respondent be ordered to stop interfering with the distribution of the estate by the administrator.

v. **THAT** the cost of this application be in the cause.

6. The one dated 24th July 2018 and filed on 1st August 2018 the parties are

BEATRICE GAKENIA MBUGUA.....1ST APPLICANT

ROSE MUMBI NDUNG’U.....2ND APPLICANT

VERSUS

EPHRAIM MWANGI GACHIGUA.....RESPONDENT

7. It seeks orders:

i) *That this application be certified and be heard on priority basis.*

ii) *That Ephraim Mwangi Gachigua his servants, agents and employees be restrained from intermeddling with the estate of Sophia Watare Gachigua and be restrained from felling down trees in estate property LR KONYU/BARICHO/2133 until the hearing and determination of Summons general for Rectification of confirmation of grant dated 8th May 2018.*

iii) *That Ephraim Mwangi Gachigua be restrained from harassing tenants of Beatrice Gakenia Mbugua on LR Konyu/Baricho/2133.*

iv) *That this Honourable Court do issue an order that Ephraim Mwangi Gachigua do show cause why he should not be punished for intermeddling with property of the estate of Sophia Watare Gachigua viz felling down two mature bluegum trees valued at Kshs.60,000/-.*

v) *That this Honourable court do issue an order that Ephraim Mwangi Gachigua do show cause why he should not be punished for contempt of court for contravening this court order dated 30th June 2015 and Section 45(2) (a) & (b) of Succession Act and deposit in court a sum of Kshs.60,000/- being value of the felled two trees plus costs of this application.*

vi) *That costs be in the cause and these orders be enforced by OCS Karatina police station.*

8. The Summons for Rectification of Grant seeks the orders:

That the grant issued on 13th April 2017 to Ephraim Mwangi Gachigua be rectified by adding names of joint administrators Beatrice Gakenia Mbugua and Rose Mumbi Ndung’u to confirm with the grant of letters of administration intestate issued on 16th May 2014 by this Honourable Court.

9. The applicants set out a schedule of how the estate ought to be distributed.

10. The respondent opposes the application on the ground that the summons for rectification of grant is an abuse of the process of court as it seeks to set aside Mativo J’s order yet the only option available to the applicants is an appeal if they were dissatisfied they ought to appeal.

11. The only issue in contention is whether there was any error in warranting rectification in the order by the Judge stating: -

a) *That the Grant of letters of administration intestate to the deceased’s estate be made to Ephraim Mwangi Gachigua in this cause on 16th May 2014 be confirmed.*

12. The applicants argue that the court issued a grant to three administrators on 16th May 2014 and the judgment of Mativo J of 24th November 2016 confirming the grant in the name of only one administrator was erroneous and ought to be rectified.

13. I have read the judgment by Mativo J. It was made following the hearing of the protest filed by the applicants herein, and the summons for confirmation of grant filed by the respondents. The Judge found in favour of the protestors and proceeded to issue the order as set out herein above.

14. I have perused the record and confirmed that indeed a grant was issued to three administrators on 16th May 2014. The Judge was alive to that issue but went on to order as he did.

15. What errors are rectifiable under s. 74 of the Law of Succession Act?

16. S.74 of the Laws of Succession Act clearly states:-

“Errors in names and description; or in setting forth the time and place of the deceased’s death, or the purpose of a limited grant may be rectified by the court, and the grant of representation whether before/after confirmation may be altered and amended accordingly”

17. In my view, no error, as envisaged by s. 74 of the Laws of Succession Act has been demonstrated. The law is clear as to what can be done by the court under s.74. Hence there can be no re-distribution of the estate or addition of beneficiaries/estate through rectification.

18. The only option presently is for a certificate of confirmation of grant intestate to issue in terms of Justice Mativo’s judgment of 24th November 2016 together with the consent entered into by the parties on 27th July 2015. I agree with the applicants that there is a typo regarding the share for the family of Margaret Wanjiku Kamuru’s family out of KONYU/BARICHO/2133. It r should read 0.288 acres instead of 0.200 acres. That prayer for rectification to that extent is allowed. The applicants have sought through rectification to add a list of persons they say are the members of the family of Margaret Wanjiru Kamuru (deceased). This list was not in Mativo J’s judgment. They are being introduced without any foundation as a list. The he court has no way of ascertaining the list given in the submission by counsel for the applicant. There is a process from introducing additional beneficiaries to an estate that gives the court the space to ascertain that indeed those are the beneficiaries to that estate rectification is not one of them.

19. Hence, the application of 8th May 2018 is allowed:

a. Only to the extent that it rectifies typo in the distribution of Konyu/Baricho/2133 share for Margaret Wanjiku Kamuru to read 0.288 acres.

b. The administrator to introduce the beneficiaries of Margaret Wanjiku Kamuru (deceased);

c. Certificate of confirmation of grant to issue in terms of Mativo J’s judgment dated 24th November 2016 and the consent entered on 22nd July 2015 as indicated here below:

1. THAT L.R No.Mutara/Thome Block 1/3439 (Mathira) be transferred to JOYCE NYAMBURA MBICHO absolutely.

2. THAT L.R NO.Nanyuki/Marura Block 11/57 be transferred to EPHRAIM MWANGI GACHIGUA absolutely.

3. THAT the following assets be shared equal shares by all the beneficiaries

i) East African Breweries Limited shares.

ii) Kenya Commercial Bank Limited shares

iii) Funds in Account No. [particulars withhld] Kenya Commercial Bank Limited Karatina Branch.

iv) Funds in Account No.[particulars withhld] Barclays Bank Limited –Karatina Branch

a. That the Grant of letters of Administration intestate to the deceased’s estate be made to Ephraim Mwangi Gachigua in this cause on 16th May 2014 be confirmed.

b. That L.R No.Konyu/Baricho/2133 measuring 2.45 acres to be shared as follows:-

Grace Wanjira Mwangangi.....0.288 acres

Ellah Wanjagi Mugambi.....0.144 acres

Catherine Gathoni Kamuru.....0.288 acres to hold in trust for the family of Margaret Wanjiku Kamuru—deceased.

Beatrice Gakenia Mbugua.....0.288 acres

Ephraim Mwangi Gachigua.....0.144 acres

Joyce Nyambura Mbicho.....0.288 acres

Jane wairimu Kaura.....0.288 acres

Rose Mumbi Ndungu.....0.288 acres

Agnes Wanjiru Kihurani.....0.288 acres

Mercy Nyaguthii Ngatia.....0.288 acres

c. That shares at Barclays Bank of Kenya Limited be shared equally among:-

Grace Wanjira Mwangangi

Ellah Wanjagi Mugambi

Catherine Gathoni Kamuru

Beatrice Gakenia Mbugua

Ephraim Mwangi Gachigua

Joyce Nyambura Mbicho

Jane wairimu Kaura

Rose Mumbi Ndungu

Agnes Wanjiru Kihurani

Mercy Nyaguthii Ngatia

d. No orders as to costs.

20. With regard to applications dated 26th July 2018 and 24th July 2018, I find that they are as a result of the delay in the distribution of the estate. The issues raised therein can be dealt with upon the distribution of the estate. Under Section 83 of the LOSA which provides for Duties of personal representative it states that the Personal representatives shall have the following duties—

83 (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

21. I order therefore that within 6 months from today's date, the administrator herein will be required to account for the estate as required by law.

22. These two applications are in my view a stumbling block to the distribution. Each of them is struck out, without orders to costs, as being as pre-mature in light of s. 83(e) of the Laws of Succession Act.

A. In view of the foregoing: The administrator to file a further affidavit supported by a chief's letter on the heirs of Margaret Wanjiku Kamuru within 7 days hereof: Mention on 30th May to confirm the same.

B. The administrator to distribute the Estate accordingly.

C. Should there be lack of cooperation from any of the beneficiaries, the Deputy Registrar to execute any or all requisite transmission documents.

D. The matter be mentioned in 6 months on the 28th Nov 2019 for the administrator's report under s. 83(e) of Laws of Succession Act.

Dated, delivered and signed this 23rd May 2019 at Nyeri.

MUMBUA T.MATHEKA

JUDGE

In the presence of

Court Assistant: Juliet

Beatrice Gakenia Mbugua

Agnes Wambui Kamuru

Joyce Nyambura Mbicho

Mr. Wagiita for Mr. Muguku for applicant/ petitioner

Judge