



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

SUCCESSION CAUSE NO. 111 OF 1988

IN THE MATTER OF THE ESTATE OF KATHUITA KAVIRA Alias KATHOITA KAVERA (DECEASED)

NJAGI KATHUITA.....APPLICANT

VERSUS

EUNICE MARIGU KATHUITA.....PROTESTOR

R U L I N G

A. Introduction

1. This ruling is for the application by way of Summons for Rectification of grant dated 13th November 2018. It is brought by one of the beneficiaries of one of the administrator of the estate of Kathuita Kavira alias Kathoita Kavera, deceased. The applicant seeks for orders that the certificate of confirmed grant issued on 9th April 1990 be rectified to replace the administrator and two beneficiaries of the deceased therein with their beneficiaries and have the deceased's estate devolve directly to them.

2. The applicant Njagi Kathuita states in his affidavit sworn on 13th November 2018 that the administrator and two other beneficiaries of the deceased died before the transfer process was over. It is in this respect that he would like the certificate of confirmed grant rectified to reflect this development.

3. The protestor herein opposes the summons and deposes in an affidavit sworn on the 8th April 2019 that she is the daughter of the administrator of the deceased's estate, Bilia Gicuku Kathuita and that the applicant obtained Letters of Administration Ad Litem by swearing falsely that he is the late Bilia Gicuku's son. She further deposes that the beneficiaries of the estate of the deceased had done permanent developments in their respective portions for a period of more than 25 years and that the attempts by the applicant would destabilise and disinherit some beneficiaries.

B. Analysis and Determination

4. An application for rectification of a grant should be premised on Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules. Section 74 provides for the errors on grants of representation that may be rectified by the court. It provides: -

“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”.

5. The procedure for seeking the relief is set out in Rule 43 (1), which echoes Section 74 of the Law of Succession Act. Rule 34(1) says: -

“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 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.....”

6. A close reading of these two provisions will show that the provisions of the Law of Succession Act and the Probate and Administration Rules is not analogous to the provisions in the Civil Procedure Rules on amendment of pleadings. The amendment provisions in Order 8 of the Civil Procedure Rules are extremely broad, and are not at all comparable to what Sections 74 and Rule 43 provide. The provisions in Section 74 and Rule 43 are extremely restricted. They permit rectification of grants in three clearly defined cases: -

“(a) errors in names and descriptions of persons or things;

(b) errors as to time or place of death of the deceased;

(c) in cases of a limited grant, the purpose for which such limited is made;”

7. The power to rectify a grant is limited to these three situations or circumstances. For the purposes of *Section 74* and Rule 43, an error must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is the death of an administrator and beneficiaries an error? The simple answer is No.

8. The affidavit of protest filed herein raises issues as to the status of the applicant herein as a beneficiary to the estate of the deceased. Further, both the applicant and the protestor cite the persons named in this application as proposed beneficiaries as the grandsons of the deceased administrator Bilia Gicuku Kathuita.

9. The protestor states that the alleged grandsons are adults of sound mind who can pursue their interests in court without the help of the applicant.

10. The protestor has deponed that the applicant used false information that he is the son of the deceased administrator Bilia Gichuku to obtain a limited grant *ad litem* which he is now using in support of this application.

11. I have perused the annexures and note that the grant *ad litem* sole purpose was to substitute the deceased administrator and was not aware of the proceedings to obtain the grant in CM Embu Misc. Application No. 93 of 2018.

12. The applicant did not mention herein or in the miscellaneous proceedings how he is related to the deceased administrator or even explain why he did not inform the children of the late Bilia Gicuku Kathuita that he intended to seek issue of the limited grant. The act of the applicant in obtaining the grant was therefore not in good faith.

13. The applicant purports to allocate the shares in the grant confirmed on 9th April 1990 to the grandsons of the late Bilia Gicuku and two other deceased beneficiaries. He does not explain his relationship with the two deceased beneficiaries namely Silas Mugo Kathuita and Alvan Nyaga Kathuita. Neither has he produced any authority given to him the act on behalf of the children of the deceased beneficiaries.

14. I have perused the record and noted that the applicant's name does not feature anywhere as a survivor of the deceased or as a child of the deceased beneficiaries.

15. Finally, the record shows that there was no application filed to substitute the deceased administrator or any orders obtained by the applicant to that effect.

16. For the above reasons, I hereby dismiss the application dated 13th November, 2018 for lack of merit.

17. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF JULY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Both parties present