

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 584 OF 2009

IN THE MATTER OF THE ESTATE OF RICHARD MWAURA KINYARIRO (DECEASED)

RULING

1. Vide a Chamber Summons for rectification of a grant dated 10th January 2018, the applicant herein sought rectification of certificate of confirmation of grant dated 19th day of September 2017 to reflect the following changes:

(a) That the name of the deceased herein be rectified to read Richard Mwaura Kinyariro alias Richard Mwaura alias R.M. Kinyariro instead of Richard Mwaura Kinyariro.

(b) That the certificate of confirmation of grant dated 19th day of September 2017 be rectified to indicate that L.R. No. Lari/Kirenga/1217 be given to Paul Kinyari Mwaura while the land parcel No. Longonot/Kijabe Block 2/7700 be shared equally between Paul Kinyariro Mwaura and Hiram Kamau Mwaura.

(c) That land L.R. No. Longonot/Kijabe Block 2/587 be rectified to read Longonot/Kinjabe Block 2/5878.

(d) That all the shares stated be amended by removing the indicated quantity and to have the same read “all shares” with National Industrial Credit, Housing Finance Company Ltd, Kenya Airways, Tourism Promotion (TPS) Limited, City Trust Ltd, Kenya Commercial Bank Ltd (Co-op Security Ltd, and City Breweries Investment Ltd.

2. Application is supported by grounds on the face of it and affidavit in support sworn by the applicant on 10TH January 2018. Application for rectification of a grant of representation or certificate of confirmation of grant by way of altering or amendment of the same is governed by Section 74 of the Law of Succession Act and rule 43(1) of the Probate and Administration rules. Rectification is therefore applicable and only limited to circumstances or situations where errors in names and descriptions as in setting out the time and place of deceased’s death, or the purpose in a limited grant.

3. I have carefully considered the application herein and the specific prayers being sought vis a vis the certificate of confirmation of grant issued on 19th September 2017. The first prayer is in relation to correction of the deceased’s name to read Richard Mwaura Kinyariro alias Richard Mwaura alias R.M. Kinyariro so as to conform with his identity as reflected in various title documents and his identity card. The prayer sought is well covered under Section 74 and rule 43(1) aforesaid hence the same is allowed as prayed.

4. With regard to prayer 2 seeking to redistribute some of the properties to some beneficiaries afresh, the same does not amount to rectification of an error. This prayer is seeking to amend the grant by way of review through a wrong provision of the law. Section 74 of the Law of Succession and rule 43(1) of the probate and administration rules cannot apply. Secondly, all beneficiaries must sign a consent to the fresh proposed mode of distribution being a new arrangement. The applicant was not able to explain why he wanted to change the already agreed and confirmed mode of distribution unilaterally. For the above stated reasons, prayer 2 is disallowed.

5. As concerns prayer No 3 seeking to rectify the property known as Longonot/Kijabe Block 2/587 to read Longonot Kinjabe Block 2/5878, the same is clear from the search certificate attached to the petition application. It is also an error curable under Section 74 and rule 43(1) aforesaid. Prayer 3 is therefore allowed as prayed.

6. In respect to prayer No. 4 seeking to remove the quantity or number of shares reflected against each beneficiary to read generally as “all shares” no explanation was given to justify those changes. Equally this will amount to variation of the individual shareholding without the consent of the rest of the beneficiaries which is necessary is necessary.

7. Accordingly, prayer one and three of the application dated 10th January 2018 are allowed and prayers 2 and 4 disallowed.

Order accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI ON THIS 11TH DAY OF APRIL, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

Applicant.....In person

..... Court Assistant