



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

SUCCESSION CAUSE NO. 6 OF 2017

IN THE MATTER OF THE ESTATE OF SAMUEL RITOINE SIKOREI (DECEASED)

RULING

By an application under Certificate of Urgency together with summons filed on 16/4/2018. The applicant seeks the following orders that:

- 1. A portion of 0.156 hectares be hived from LR No. Ngong/Ngong/16754, being a purchaser's interest, and be vested in Susan Muthoni Karanja.**
- 2. The Certificate of Confirmation of grant of the estate of the deceased dated 21st November 2017 be rectified and the said Susan Muthoni Karanja be included in the schedule of distribution as a beneficiary of the estate of the deceased on the aforesaid portion for the 0.156 hectares.**
- 3. The order confirming the said grant be herein reviewed and or set aside**
- 4. The balance of the estate of the deceased to be held in trust by Josleen Murugi Njeru and Janet Timanto Sinetei for the dependants who are minors, namely; Erick Letera Ritoine, Lilian Milanoi rotoine and Kenneth Swakei Ritoine and thereafter to be shared equally among the said beneficiaries.**

The application is brought under section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules.

It is supported by the annexed application of one Josleen Murugi Njeru and Janet Timanto Sinetei;

Mainly on the grounds that: During the lifetime of the deceased he entered into a sale agreement of land with Susan Muthoni Karanja.

The applicant reckons that she has been aware of the transactions and even went ahead to attach the agreement for the sale of a portion of land identified as 0.156 hectares. The applicant further avers that the purchaser is entitled to the said portion, though her name was not included in the initial petition for grant of letters of administration.

I have considered the application and the grounds upon which it is premised.

Under section 74 of the law of succession and Rule 43 (1) of the Probate and Administration. The law provides what constitutes errors to be rectified in the following language:

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

The power to rectify grant is therefore limited to only the above circumstances.

In the case of the matter of the Estate of Muniu Karago deceased Nairobi High Court P&A 2668/1992 UR the court held that:

“An application for rectification of grant which is meant to substantially change the character of the confirmed of grant was not an appropriate remedy”.

After looking at all the circumstances and facts of the application, the applicant has not demonstrated that she falls on any of the prescriptions

contemplated in section 74 and Rule 43 (1) of the Act.

The request being made on rectification a motive to substantially changing the submission of the entire letters of Confirmed Grant in its various Forms.

The discretion given to the court here is that of rectifying topographical errors, omissions or minor mistakes under section 74 of the Act. it is not to re-open the already distributed estate and set in motion fresh proceedings to re-distribute the same estate to some beneficiaries who were omitted at the initial proceedings. This thus summons for rectification is for all interest and purposes not an application as envisaged in law and as required by section 74 of the law of succession (CAP 160 of Laws of Kenya).

In the aforesaid circumstances this court has no option but to dismiss the summons for non-compliance with section 74 and Rule 43 (1) of he Act.

The costs be borne by the applicant.

Dated, Signed and Delivered in open court this 28th May 2018 at Kajiado

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R. NYAKUNDI

JUDGE

In the presence of:

- Mr. Wakla for Chelagat for the applicant
- Mr. Mateli – Court Assistant