



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 280 OF 2014

IN THE MATTER OF THE ESTATE OF JOHN MURIITHI KARIGU DECEASED

FRANCIS WAWERU KAGWI..... APPLICANT

V E R S U S

MARY WAMBURA BARUA.....1ST RESPONDENT

BONIFACE NJOKA RURII.....2ND RESPONDENT

RULING

The grant of representation of the estate of the late John Muriithi Karigu was issued to Francis Waweru Kagwi and confirmed on 17/05/2016 whereby the deceased's estate **Ngariam/Thirikwa/3103** was shared out between Francis Waweru Kagwi 0.30 Ha and Mary Wambura Barua 0.36 Ha.

The petitioner has now filed an application dated 04/06/2018 seeking to rectify the grant and the portion for Mary Wambura Barua to be distributed jointly to Mary Wambura Barua and Boniface Njoka Rurii. The grounds are that the name of Boniface Njoka Rurii was inadvertently omitted since he owned the land jointly with the deceased.

Rectification of grant

Section 74 of the Law of Succession Act 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.

Rule 43(1) of the Probate and Administration Rules provides:

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.

These provisions sets out what is envisaged in application for rectification of grant. It is for correction of errors which do not change the substance of the grant.

In the matter of the estate of Hasalon Mwangi Kahero [2013] eKLR

The court stated:

“when dealing with an application for rectification of grant to add a full name of person who was omitted.”

An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error? It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.

In the matter of the estate of Geoffrey Kinuthia Nyamwinda (deceased) [2013] eKLR

The court stated;

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.

In this case, the petitioner seeks to include Boniface Njoka Rurii who had been left out and since he owned the land jointly with the deceased. However, this cannot be termed as an error under **Section 74 of the Law of Succession Act** since his names were omitted.

The applicant is not seeking to correct his name but to include his name because he jointly owned the land with the deceased. This is a completely new cause of action as he co-owned the land with the deceased. It would be stretching the meaning of an error which is to be corrected by rectification too far.

The application to rectify the grant on this ground is declined. The application is without merits.

I dismiss it.

Dated at Kerugoya this 22nd day of November 2018.

L. W. GITARI

JUDGE

Joyce Wanini

Legal Researcher, Kerugoya High Court