

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2287 OF 2012

IN THE MATTER OF THE ESTATE OF WILFRED KOINANGE

KARUGA ALIAS WILFRED KOINANGE (DECEASED)

RULING

1. By a chamber summons dated 25th June 2018 and filed in court on 25th June 2018, the applicant/executrix prayed for orders seeking to review the amended certificate of confirmation of grant issued to Rosemary Bagenda Koinange on 6th March 2017 so as to include properties that were allegedly left out during confirmation.
2. The application which is filed under rule 65 of Probate and Administration rules, Section 47 of the Law of Succession and Order 45 of the Civil Procedure Rules, is predicated upon grounds set out on the face of it and an affidavit in support sworn by the applicant on 25th June 2018. The certificate of confirmation of grant of probate with written Will was made to the executrix (applicant) on 28th January 2014 and the estate shared out to her as the sole beneficiary.
3. The said certificate was rectified on 6th March 2017 upon discovery of more properties that were not included in the original grant. The instant application is seeking to further rectify the rectified certificate to include four more properties that were omitted from the list and have since been discovered namely; LR 5999/14, LR No. 5999/30, LR No.5999/35 and LR 5999/42.
4. It is the applicant's averment that the said properties were omitted because the deed plans giving rise to those titles were misplaced. After considering the application herein, affidavit in support and the annexures thereof, it is apparent that the deed plans No. 260 621, 260 627, 260 642 and 260 649, 260 612, 260 613 and 260 614 giving rise to Plots No. 5999/2/11, 5999/2/17, 5999/2/32, 5999/2/39, 599/2/12, 5999/2/3 and 5999/2/4 respectively were not included.
5. Considering that the applicant is the sole executrix and beneficiary, there is no objection on record. Rule 63 of the Probate and Administration rules provides for the application of order 45 of Civil Procedure rules. A court can therefore review its orders in a succession file under Order 45 of the Civil Procedure Rules (**See Charles Kibe Karanja (deceased) (2015) eKLR**).
6. However, this court is not going to execute transfer of title to purchasers (3rd parties) under the guise of review. Accordingly, the application for review is allowed only to the extent that the omitted deed plans as indicated are included in the rectified certificate of confirmation of grant. Once the executrix takes over ownership, she will transfer the same to 3rd parties in the normal way as she wishes.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER, 2018.

J.N. ONYIEGO

JUDGE