



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

SUCCESSION CAUSE NO 28 OF 2017

IN THE MATTER OF THE ESTATE OF KARANG'AE KISIER (DECEASED)

ALEX S. KARANG'AE.....PETITIONER

VERSUS

ELIZABETH NASHIPAE KARANG'AE.....APPLICANT

CHARITY NAISENYA KARANG'AE.....APPLICANT/OBJECTOR

RULING

1. This ruling is in respect of the preliminary objection dated 26/10/2018, by the objectors. According to them, the summons for the amendment of the petition is defective and should be dismissed with costs. The petitioner's application on summons for amendment of the petition seeks to amend the petition to include the objectors and the two properties, which the petitioner claims were inadvertently left out. According to the objectors, those properties are not listed in the confirmed grant and are registered as the properties of the petitioner.
2. The objectors in their written submissions have submitted that an amendment to the petition under rule 14(1) may be done before the making of a grant. Under section 74 of the Law of Succession Act (Cap 160) Laws of Kenya, an alteration of a grant is permitted in respect of errors in relation to the names and descriptions in relation to the time and place of the death of the deceased.
3. Counsel for the objectors has submitted that the petitioner's application is defective and should be dismissed.
4. In his affidavit in support of the summons for amendment of the petition, the petitioner has deponed to the following major matters. He has deponed that he involved all family members in respect of the estate before making an application for a grant of representation. He has averred that the two objectors were not included since they were happily married and intimated to members of the family that they had no interest in the estate. He has further averred that the family does not object to the objectors desire to have shares in the estate of their late father.
5. As regards the above properties, the petitioner has averred that they were in the form of shares in a land buying company; and that it was only after confirmation of the grant that they became aware that there was land, which they now intend to have it included as part of the estate. Finally, the petitioner has averred that although his name appears as the registered owner of the above parcels of land, it was done to enable him to follow up as an administrator of the estate.
6. In addition to the foregoing, counsel for the petitioner has filed submissions in opposition to the preliminary objection dated 26/10/2018.
7. In the light of the foregoing rival submissions of both counsel, I find the following to be the issues for determination.
 1. Whether or not the application by the petitioner to amend the petition is proper.
 2. Who bears the costs of this application?

Issue 1

8. The law in this regard is very clear. Under section 74 of the Law of Succession Act, it is only errors in the names and description in relation to time and place of the death of the deceased, that may be amended whether before or after confirmation of the grant. The application to include the two objectors as beneficiaries and the two parcels of land, which the petitioner claims were inadvertently left out, is not allowed by law. In the circumstances, I find that there is merit in the preliminary objection. The instant amendment of the petition is not permitted under section 76 of the Law of Succession Act.

Issue 2

9. In view of the fact that the parties are members of the same family, I hereby make no orders as to costs.

10. The upshot of the foregoing is that the preliminary objection is hereby upheld with the result that the summons for the amendment of the petition is hereby dismissed, with no order as to costs.

11. **Ruling signed and delivered in open court this 18th day of December, 2018** in the presence of Ms Nchoe holding brief for Ms Kudate for the objectors and Ms Beru holding brief for Ms Morara for the petitioner.

J. M. Bwonwonga

Judge

18/12/2018