



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1189 OF 2005

**IN THE MATTER OF THE ESTATE OF HANNAH KAMIRI WARARI ALIAS HANNAH
WANJIKU MUNYUI – DECEASED**

IBRAHIM KINYANJUI1ST APPLICANT

ESTER WANJIKU KINYANJUI.....2ND APPLICANT

VERSUS

SHERIFF PATRICK NDUNI1ST RESPONDENT

PETER MUNYUI WARARI.....2ND RESPONDENT

RULING

1. The applicants Ibrahim Kinyanjui and Esther Wanjiku Kinyanjui filed this application dated 23rd June 2016 seeking that the grant of letters issued to the respondents Sheriff Patrick Nduni and Peter Munyui Warari and confirmed on 29th June 2015 be rectified so that all the deceased's properties be shared equally to all the deceased's beneficiaries. In the certificate of confirmation it was indicated that out of the deceased's Kiambaa/Ruaka/1502 the respondents get $\frac{3}{4}$ acres each, then they equally share $\frac{1}{4}$ acres from the same title, Nelly Wairimu Munyui gets $\frac{1}{4}$ acres from the title, the 2nd respondent and Nelly Wairimu Munyui equally share Molo Farm Plot No. 589 and the 2nd respondent gets case in HFCK A/C No. 101006475511 Kshs27,797/= . Their case was that they were the children of the respondents' late brother George Kinyanjui and their mother was the late Salome Wambui Njeri. Their entitlement, they said, was supposed to be equal to what the respondents were each getting from the estate.

2. The history of the matter is that the deceased Hannah Kamuri Warari alias Hannah Wanjiku Munyui died intestate on 7th March 2000. The respondents, Nelly Wairimu Munyui and the late George Kinyanjui were her children. The respondents petitioned the court for grant of letters of administration intestate. The same was issued on 2nd October 2006, and confirmed on 20th July 2007. Subsequently, the applicants' mother Salome Wambui Njeri (before she died) learnt of the confirmed grant and begun to agitate. The respondent moved the court and got the certificate of confirmation amended thereby giving Salome and one Elizabeth Nyambura Kinyanjui $\frac{1}{4}$ acres each of Kiambaa/Ruaka/1502, and then making the two and the 2nd respondent and Nelly Wairimu Munyui to equally share Molo Farm Plot No. 589. The respondents were saying that their late brother had two wives: Salome and Elizabeth. Salome was aggrieved by this new sharing and filed application to rectify the certificate of confirmation. She died before the application could be heard. The applicants were subsequently allowed to substitute her, hence

the present application.

3. The respondents filed a replying affidavit to deny that the applicants were entitled to benefit from the estate of the deceased. Their case was that the applicants were not the children of their late brother George Kinyanjui. They stated that George Kinyanjui was married to Salome for about four months only and they got no child. Secondly, the respondents stated that the certificate of confirmation had no omissions, errors or mistakes that could be corrected by rectification. Thirdly, in any event, the application has been overtaken by events as the beneficiaries had already shared the estate, and some of it sold to third parties.

4. The application by the applicants sought the rectification of the grant of letters of administration intestate issued to the respondents and confirmed on the 29th June 2015 so –

“(a) That all the deceased properties be shared equally amongst all the deceased beneficiaries.”

Rule 43(1) of the Probate and Administration Rules of the Law of Succession Act (Cap. 160) was invoked as the basis for the application. The rule reads:

“43(1) 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 of which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

The court is not dealing with a limited grant, but a full grant which has been confirmed. Secondly, the grant was made to the respondents, and not the applicants. The rule gives power to the grantee to seek the rectification of the grant. Thirdly, what can be rectified is –

“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”

Rectification is permissible to correct superficial errors or mistakes in the grant. Where the applicant is challenging the mode of distribution in the grant, and seeks redistribution to include him or other parties, that cannot be dealt with in an application for rectification (**In the Matter of the Estate of Muniu Karugo (Deceased) Nairobi HC Succession Cause No. 2668 of 1997**). Rectification cannot be used to fundamentally change the character of the grant. In **In the Matter of the Estate of Ndungu Kiruki Succession Cause No. 1086 of 1995** reported in **Kamau –v- Kirima [2002]** it was held that –

“.....it is not proper and lawful to proceed under rectification of that certificate of confirmation to replace the deceased beneficiary with a person other than a confirmed executor or administrator of the estate of the deceased beneficiary.”

This is because a certificate of confirmation confers upon a beneficiary under it a beneficial interest in the estate of the deceased person. Where the beneficiary dies such interest can only go to the executor or administrator of the estate of such owner. Lastly, rectification can only be done in the situations envisaged in **section 74 of the Act and rule 43(1) of the Probate and Administration Rules**.

5. In the Cause, the applicants were saying that they are entitled to a portion of the estate of the deceased by virtue of their being the children of the late Salome Wambui Njeri who was the wife of the late brother of the respondents called George Kinyanjui. The respondents denied that Salome was the wife of their late brother. They denied that the applicants were the children of their late brother. They denied that the applicants were beneficiaries of the estate of the deceased. The court has to conduct an inquiry to verify the claims of the applicants. Evidence has to be called to find out whether redistribution of the estate of the deceased to accommodate the claims by the applicants is merited.

6. In short, and this is the finding of the court, there is no error or mistake in the grant that was issued to the respondents and confirmed on 29th June 2015. The circumstances that the applicants find themselves in cannot be dealt with under either **rule 43(1)** of the **Rules** or **section 74** of the **Act**. There is no merit in the application dated 23rd June 2016 by the applicants. The same is dismissed with costs.

SIGNED and DATED at NAIROBI this 24th JANUARY 2017

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 25th JANUARY 2017

W. MUSYOKA

JUDGE