



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO.649 OF 2005

IN THE MATTER OF THE ESTATE OF SABETH NDUUME PETER(DECEASED)

1. WLFRED MUMO MBOKA)

2. ZAKAYO MUTUA MBOKA)...PETITIONERS/APPLICANTS

RULING OF THE COURT

1. The Application

The Petitioners/Applicants herein have filed an application dated 15th June, 2016 under the provision of Order 51 rule 1 2(a) and Order 37 Rule 1 of the Civil Procedure rules and Section 74 of the Laws of Succession Act Cap 160 Laws of Kenya and Rule 43 of the Probate and Administration Rules seeking the following orders namely:

1. THAT the Grant of Letters of Administration issued To WILFRED MUMO MBOKA & ZAKAYO MUTUA MBOKA on 29/03/2006 be Amended to include all the assets which form part of the deceased's estate and which were not included in the Petition for grant.

2. THAT, costs of this application be in the cause.

2. The Application is supported by an Affidavit of WILFRED MUMO MBOKA the 1st Petitioner/Applicant herein and the following grounds namely:-

1. THAT grant of Letters of Administration was issued on 29/03/2006.

2. THAT by a genuine mistake some of the Deceased's assets were omitted from the list of assets yet they formed part of the Deceased's assets.

3. THAT the Deceased's assets/properties which form part of her estate and were not included in the petition for grant as shown herein below:-

a. SHARES WITH THE CO-OPERATIVE BANK OF KENYA LIMITED.

b. ACCOUNT NO. 016154238300 AT THE CO-OPERATIVE BANK OF KENYA LIMITED IN THE JOINT NAMES – PETER MBOKA MUTUA AND SABETH NDUUME PETER,

c. POST BANK ACCOUNT NO.25403

4. *THAT the same cannot be included without the orders of this Honourable court.*

5. *THAT it is imperative that the sought orders of rectification be granted so as to enable the Petitioners/applicants wholly administer the Estate of the deceased.*

6. *THAT no party will be prejudiced if the orders sought are granted.*

3. Pursuant to the filing of the above application the counsel for the Petitioners/Applicants was directed by this court to file a supplementary affidavit annexing the documents in support of the assets that had been omitted and which are needed to form part of the deceased's estate. The same was duly complied with.

4. The Applicants' case is that at the time the grant was issued on 29/03/2006 some of the deceased's assets had not been captured and they are now requesting this court to allow the rectification of grant so as to enable them list all the deceased's assets and thereafter proceed to administer the estate of the deceased.

5. I have considered the Petitioners Application. The issue for determination is whether the applicants have made out a good case warranting an order for rectification of grant of letters of administration. The Applicants invite the court to exercise the powers granted to the court under **Section 74** of the **Law of Succession Act** which provides as follows:-

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

Rule 43 of the Probate and Administration Rules provides for the manner in which application for rectification of grants are to be made. It provides at Rule 43 (1) that:-

“ 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 description 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”

The applicants have stated clearly that due to a genuine mistake some of the deceased's assets were omitted from the list of assets yet they form part of the deceased's estate which they have listed them as hereunder:-

a. Shares with Co-operative Bank Kenya Limited,

b. Account number in the joint names of Peter Mboka Mutua and Sabeth Nduume Peter,

c. Post Bank account Number 25403.

The Court record shows that the Applicants petitioned for Grant of Letters of administration intestate and which was issued to them on the 29/03/2006. All the beneficiaries gave their consent to the effect that the Applicants do petition for letters of Grant of Administration on behalf of the estate of the deceased herein. The Applicants have now indicated that some of the deceased's assets had been left out when process of filing this Succession Cause was commenced, they have stated that the error was genuine and now want the grant to be rectified so as to reflect all the assets of the deceased which would be then available for distribution among the beneficiaries during the confirmation of grant. I am satisfied by the explanation given by the Applicants and I find it is appropriate to include all the assets of the deceased before the same are distributed among the beneficiaries. It is normal to leave out or forget some assets at the initial stages of petitioning for grant of probate and that is why Section 74 of the Succession Act and Rule 43 of the Probate and Administration Rules come in handy to take care of such lapses.

In the result, I find the Applicants Application dated 15th June, 2016 has merit. The same is granted as prayed. The Applicants shall thereafter file Summons for confirmation of grant clearly setting out the mode of distribution of the estate among all the beneficiaries.

Dated and Delivered at Machakos this 23rd day of February ,2017.

D. K. KEMEI

JUDGE

In the presence of:

Muumbi for Wambua for Applicant.....

C/A: Munyao.....