

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2212 OF 2012

IN THE MATTER OF THE ESTATE OF FATMAKHANU GULAMHUSSEIN

LADHA ALIAS FATMA KHANU GULAM HUSSEIN LADHA (DECEASED)

RULING

1. The applicant Nurbanu Mohamed Akbarali Alidina the administratrix herein moved the court through summons dated 16/2/2016 seeking for rectification of the grant confirmed on 14th July, 2014. Application filed pursuant to Section 74 of the Law of Succession and Rule 43 of the Probate and Administration rules seeks to have all the shares distributed to the respective beneficiaries revert back to her absolutely. Application is supported by affidavit in support sworn by the applicant on 16th February, 2016.

2. The applicant avers that, since the grant was confirmed and estate comprising of 56 shares in Diamond Jubilee Investment Trust (Tanzania) Ltd., 50 shares in Diamond Jubilee Investment Trust Uganda and 13860 shares in Nation Media Group distributed and shared equally amongst the beneficiaries, none of them except applicant has bothered to have the confirmed grant executed by transferring their respective shares.

3. In Paragraph 3 of the supporting affidavit she avers that, since confirmation of the grant, she has been unable to transfer the shares to the beneficiaries the reason being that most of them live abroad and are of advanced age and unwilling to take their shares. That it would be costly to secure all the beneficiaries or have the documentation to facilitate transfer of shares. As a consequence of their inability to come to Kenya or even execute transfer documents, the applicant sought for their consent to amend the grant so that she could have all the shares absolutely, sell and then remit proceeds to them. She attached notarized consent executed by the beneficiaries namely Amirali Gulamhusein Ladha, Sadrudin Gulamhusein Ladha, Gulshan Alimohamed Kassam, Luksum Shokat Gilani, Yasmin Shirazali Boghani and Alnoor Gulamhusein Ladha on the 10th October, 2015.

4. I have considered application herein which is seeking for rectification of the grant and its supporting affidavit which is brought under rule 43 of Probate and Administration rules and Section 71 of the Succession Act. Unfortunately, what is being sought does not fit and apply under the stated provisions. There is no error here worth the claim for rectification. The applicant simply ought to have filed an application for amendment and review of the confirmed grant because the prayers sought entail redistribution of the estate.

5. However, under rule 73 of Probate and Administration rules, a court has inherent powers to dispense justice. Article 159 of the Constitution comes to prey as the omission of proper procedure and failure to quote proper provisions for amendment and review is a mere technicality which is not prejudicial.

6. The beneficiaries of the estate herein relinquished their interest in the estate thereby entirely awarding the applicant the entire benefits. This court has no reason to reject the same.

7. Accordingly, application dated 16/2/2016 which is not opposed is hereby allowed as prayed. The shares comprising the entire estate of the deceased to revert absolutely to the applicant.

Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF MARCH, 2017.

J.N. ONYIEGO (JUDGE)

In the presence of

Advocate for the applicants