

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1426 OF 1991

**IN THE MATTER OF THE ESTATE OF MARGARET WAMBUI alias KABUI w/o WACHIRA
(DECEASED)**

RULING

1. On 5th May 2017 I delivered a ruling wherein I held that the administrator had acted in a manner that was inconsistent with orders that the court had made on 9th June 1998, distributing the estate herein. The said acts affected the interest of Anthony Mwangi Wachira with respect to LR No. 209/2743 IR 5786/19, whereupon I directed that the administrator files accounts with respect to the disposal of the said property.
2. On 26th May 2017, the administrator lodged a document, of even date, at the registry titled 'Statement of Accounts in Regards to Sale of LR No. 209/2743 IR 5786/19.' This was no doubt in compliance with the order of 5th May 2017. He simultaneously filed an application for rectification of the certificate of confirmation of grant dated 9th June 1998, ostensibly to conform to a family agreement that allegedly justified the acts of the administrator referred to in paragraph 1 here above. .
3. The matter was mentioned on 24th July 2017, at the behest of Anthony Mwangi Wachira. He wanted directions with regard to the accounts, which he said were not adequate, requesting for opportunity to cross-examine the administrator thereon. The administrator opined that that issue could be dealt within the context of the application for rectification of certificate of confirmation of grant. Anthony Mwangi Wachira on the other hand felt that the application was geared to address issues that had already been addressed previously.
4. The application of 26th May 2017 is on record, and Anthony Mwangi Wachira has already replied to it. The administrator has filed a statement of accounts in compliance with the orders made previously herein. Anthony Mwangi Wachira is not satisfied with the said accounts and would like to cross-examine the maker of the document. He is within his rights.
5. The directions that I shall give in the circumstances are that Anthony Mwangi Wachira shall have the liberty to cross-examine the administrator on the accounts filed, on a date to be given in open court.
6. Regarding the rectification application, I hold the opinion that the same is not one for hearing by way of *viva voce* evidence. In any event, I doubt whether the orders sought can be granted under section 74 of the Law of Succession Act, Cap 160, Laws of Kenya, on which it is grounded, as that provision is only designed to deal with superficial errors. The application before me is not about errors, but redistribution of the estate. There is nothing in section 74 which grants the court discretion to make such drastic changes to orders made under section 71. The application dated 26th May 2017 shall be heard on a date to be obtained at the registry. As I have already expressed my opinion on it, it shall be heard by another Judge in the Division.
7. It is so directed.

DATED, SIGNED and DELIVERED at NAIROBI this 26TH DAY OF JULY, 2017.

W. MUSYOKA

JUDGE