



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 19 OF 2007
IN THE MATTER OF ESTATE OF KAMAU MWANIKI
RULING

1. The application for consideration is the one dated 2nd of March 2016, brought under Section 43 of the Law of Succession Act. The applicant who is one of the administrators seeks the following orders;

- i. That the co-administrator and beneficiary in the above estate Wanjau Kamau who died on 10th February 2015, be substituted with his immediate kin.
- ii. That the name Wanjau Kamau be substitute with the name Peter Mwangi Chege and Mary Njambi Maina
- iii. That costs of this application be in the cause.

2. In her supporting affidavit dated 2nd March 2016, the applicant avers that; that she is the co-administrator and administrator in the estate of the above named Kamau Mwaniki that her co-administrator Wanjau Kamau passed away on 10th February 2012. That Wanjau Kamau (deceased) is survived by Peter Mwangi Chege and Mary Njambi Maina. That she is advised by her advocate that Wanjau Kamau (deceased) should now be substituted by his survivors.

3. The application was opposed. Joseph Muigai Githii filed grounds of objection dated 14th July 2017 and states the following;

- i. That the application as filed is frivolous, vexatious and an abuse of the due process of the court.
- ii. That the application brought under S. 43 of the Law of Succession Act cannot be used to substitute a deceased's party.
- iii. That the alleged Peter Mwangi Chege and Mary Njambi Maina are strangers to the estate of Wanjau Kamau as they have not been appointed as the legal representative of the deceased.
- iv. In the absence of grant of letter administration appointing the said Peter Mwangi Chege and Mary Njambi Maina as the Legal representatives of the Estate of Wanjau Kamau the application is a non-starter.

4. At the hearing of this application Mr. Wandaka for the applicant reiterated what is deponed in the applicant's affidavit adding that they need to substitute the deceased administrator for the benefit of the estate. That Wanjau did not have an estate and that the grounds filed have no merit. That the persons the applicant wishes to substitute are beneficiaries have a right to inherit. That the objection raised is

technical and should be dismissed and that Joseph Githii is not a party in the suit as his interests will be taken care of in the proceedings.

5. In opposing the application Mr. Kirubi argued that the two persons the applicant seeks to substitute have not been appointed as the legal administrators of Wanjau Kamau hence they have no capacity to present the deceased administrator. That it would be different if they were enjoined as beneficiary of the estate of the said Kamau. That the applicant has not moved to have the two nominated to be issued with letters of administration for the estate of Kamau and therefore the application is fatally defective. He also submitted that the application seeks to rectify the grant and not to substitute as sought. That as per the act an application for rectification is brought to correct errors, names and description of parties and an application to substitute is brought under Section 74 of the Law of Succession Act.

6. Having considered the above I find that the submissions made by the respondent have merit. Rules 43 of the Law of Succession Cap 160 provides for rectification of grant. Under the said rule rectification of a grant is allowed in the case of an error to the names or descriptions of a 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. Section 43 of the Act provides for presumption of Survivorship and not substitution. The applicant seeks to substitute the deceased administrator yet she has failed to demonstrate that the two proposed persons Peter Chege and Mary Maina are the legal administrators to the estate of Wanjau Kamau. There is no evidence that the said Wanjau Kamau has no estate to be administered. As submitted the two persons proposed would be considered as beneficiaries to the estate of Wanjau Kamau, being the son and daughter in law of the deceased administrator Wanjau Kamau. I therefore decline the orders sought in the application dated 2nd March 2016. No orders as to costs. It is so ordered.

Dated, signed and delivered this **29th** day of **August 2017**

R. E. OUGO

JUDGE

In the presence of:

Miss Waithera h/b for Mr. Wandaka For the Applicant

Respondent Absent

Ms. Charity Court clerk.