



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO. 2738 OF 2004

**IN THE MATTER OF THE ESTATE OF EDITH NGURO MWANGI ALIAS EDITHI NGURO
MWANGI (DECEASED)**

RULING

1. Through summons for rectification of grant dated 30th May, 2017 but filed in court on 4th April, 2017, the applicant herein Jane Waceke Mungai sought for orders as hereunder:

(a) That both the grants of letters of probate of written Will and the amended certificate of confirmation of grant issued to Jane Waceke Mungai alias Jane Wacheke Mungai on 12th November, 2004 and 21st November, 2011 respectively be rectified in the name of the deceased to indicate her full name to read Edith Nguro Mwangi alias Edithi Nguro Mwangi alias Endias Nguro Mwangi alias Edethi Nguro Mwangi alias Endias Nguro alias Edith Nguro alias Edice Nguro Mwangi alias Indes Waithira Mwangi.

(b) That the name of the executrix be rectified in both grant of probate of written Will and the amended certificate of confirmation of grant to read Jane Waceke Mungai alias Jane Wacheke Mungai.

(c) That the amended certificate of grant issued to Jane Waceke Mungai alias Jane Wacheke Mungai on 14th November, 2005 and amended on 21st November, 2011 be rectified on change of the Will to indicate the correct description of the parcel as L.R No. 209/11714 bequeathed to Joshua Karuga Nguro instead of Bondeni Plot No. 106.

(d) That the amended certificate of confirmation of grant issued to Jane Waceke Mungai alias Jane Wacheke Mungai on 14th November, 2005 and amended on 21st November, 2011 be rectified on change of the Will to indicate the correct description of the parcel as L.R. No. 1484/665 bequeathed to Daniel L. Mwangi Wanjiku instead of Kahawa Plot No. 64.

(e) That the amended certificate of confirmation of grant issued to Jane Waceke Mungai alias Jane Wacheke Mungai on 14th November, 2005 and amended on 21st November, 2011 be rectified on clause 13 of the Will to indicate the correct description of beneficiaries as per Paragraph 12 and on the mode of distribution as per Paragraph 13 of the supporting affidavit.

(f) That the amended certificate of confirmation of grant issued to Jane Waceke Mungai alias Jane Wacheke Mungai on 14th November, 2005 and amended on 21st November, 2011 be rectified on Paragraph 16 of the Will to indicate the correct description of beneficiaries on

Clause 16 as per Paragraph 14 of the supporting affidavit.

2. Application which is brought under Section 74 of the Law of Succession Act and rule 43 (1) of the Probate and Administration rules is premised on grounds on the face of it and supporting affidavit deponed on 30th March, 2017 by Jane Waceke Mungai alias Jane Wacheke Mungai.

3. According to the applicant, she was issued with a grant of Probate with written Will in the name of Jane Waceke Mungai and now wished to add the “alias Jane Wacheke Mungai”. Although no explanation has been given as to the reason for the additional name, I will assume that it was an omission. Prayer two is thus allowed as prayed and the name of the executrix herein Jane Waceke Mungai shall be rectified to read Jane Waceke Mungai alias Jane Wacheke Mungai. Equally, prayer one seeking to add the name alias Indes Waithira Mwangi to the deceased’s name is allowed so as to conform with the name appearing in the rates payment receipts.

4. As regards prayer 3 seeking to correct description of parcel No. L.R. No. 209/11714 bequeathed to Joshua Karuga Nguro instead of Plot No. 106, the applicant has explained that Bondeni Plot No. 106 has since acquired a new number being L.R. No. 209/11714. This has been proved by way of property rates payment receipts attached (JWM3). To that extent prayer three is allowed as prayed.

5. With respect to prayer four, the applicant sought to have the correct description of L.R. 14847/665 bequeathed to L. Mwangi Wanjiku under Clause 7 of the Will reflected instead of Kahawa West Plot No. 64. Again the applicant did explain and attached rates payment receipts reflecting the new number.

Accordingly that prayer is allowed as prayed.

6. As concerns Prayer 5, the applicant prayed for correction of the grant in respect of Clause 13 of the Will to indicate the correct description of beneficiaries as per Paragraph 12 of the affidavit in support and the mode of distribution as per paragraph 13 of the said affidavit. According to Paragraph 13 of the Will, the testator stated as follows:

“I devise and bequeath to all my grandsons and granddaughters the balance of my share of distribution of L.R. 219/2 absolutely to be shared equally amongst them”.

7. From the wording of that clause, it was not clearly specified who the grandsons and grand daughters were hence the ambiguity and therefore not implementable in its current form at the lands office. On the basis of that uncertainty, the applicant identified and listed the mutually agreed contemplated grand children in her supporting affidavit as follows:

a) Edith Waithira Mungai

b) Jane Waceke Mungai alias Jane Wacheke Mungai

c) Mercy Njoki Mungai

d) Daniel Mwangi alias Daniel Mwangi Wanjiku

e) Joshua Karaya Nguro

f) Esther Wanjiru Wanjiku

g) David Nganga Wanjiku

h) Rose Wangui Wanjiku

i) Grace Wangu Wanjiku

j) John Nyutu Nguro

8. Having agreed on the list of grand children, the appellant listed several properties against each grandchild. Obviously this cannot be rectification of an error as stipulated under Section 74 of the Succession Act which provides that:

“errors in names and description or in 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”.

9. Save for identification of the grand children as per Paragraph 11 of the supporting affidavit, this court cannot share out properties that were not in existence when the Will was made and therefore not specifically stated in the Will. To do that will amount to rewriting the Will. To that extent prayer five partly succeeds only to the extent of identification of beneficiaries as listed in Paragraph 11 of the supporting affidavit.

10. As regards Prayer 6 in which the testator devised and bequeathed a balance of Plot No. Loc.1/Kihumbuini/350 absolutely and in equal shares to his grandsons, the same orders as in paragraph 9 above with respect to Prayer five shall apply with the beneficiaries (grandsons) identified in accordance with paragraph 14 of that supporting affidavit.

11. Based on the foregoing, prayers 1, 2, 3 and 4 are allowed as prayed and prayers five and six partly allowed in so far as identification of beneficiaries (grand children) is concerned. Costs in the cause.

Orders accordingly.

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

J.N. ONYIEGO (JUDGE)

In the presence of

..... for the applicant