



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO 1 OF 2009**

**In the Matter of the Estate of Stanley Mwiti Itheria alias Stanley Mwiti M'itheria alias Stanley Mwiti, Deceased**

**JOAN KIUNGA MWITI.....PETITIONER/APPLICANT**

**RULING**

[1] By Summons for Rectification of Grant dated 2<sup>nd</sup> October 2017 the court has been asked to order rectification of certificate of confirmation herein in the following manner:

- a) Name of deceased to read as STANLEY MWITI IThERIA alias STANLEY MWITI M'ITHERIA alias STANLEY MWITI;***
- b) Name of the Petitioner to read as JOAN KILINGA MWITI; and***
- c) The 1000 shares in National Bank of Kenya Ltd in the Share Certificate No. [particulars withheld] but which had been omitted from, to be included in the Certificate of Confirmation of Grant; and***
- d) That the Certificate of Confirmation of Grant to indicate that all the properties of the deceased to be registered in the name of IThERIA INVESTMENT CO. LIMITED.***

[2] The application is supported by the affidavit of the Petitioner and grounds set out in the Summons. The error in the names has been explained. So also is the omission of the 1000 shares in National bank. Those are simple errors which should be rectified under section 74 of the Law of Succession Act which provides that:-

***Errors in names and descriptions, 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.***

Accordingly, by the power conferred upon the court in section 74 of the Law of Succession Act, I hereby order that:

- a) The name of deceased shall be rectified to read as STANLEY MWITI IThERIA alias STANLEY MWITI M'ITHERIA alias STANLEY MWITI;**
- b) The name of the Petitioner shall be rectified to read as JOAN KILINGA MWITI; and**

c) The 1000 shares in National Bank of Kenya Ltd in the Share Certificate No. [particulars withheld] but which had been omitted from, shall now be accordingly included in the Certificate of Confirmation of Grant; and

d) An amended Certificate of Confirmation of Grant shall be issued forthwith.

[3] I only have trouble with the request that the Certificate of Confirmation of Grant be rectified to reflect that all the estate property be registered in the name of **ITHERIA INVESTMENT CO. LIMITED**. I have perused the Certificate of Grant signed by Chitembwe J. It shows that the person in whose name the properties appearing in the schedule is to be registered is **ITHERIA INVESTMENTS COMPANY LIMITED**. There is absolutely no need of any amendment. An omission: I have searched everywhere in these proceedings for the purported Certificate of Incorporation of the said company which shows the respective shareholding for all persons beneficially entitled to the estate but I found none. Accordingly, I direct the Petitioner to provide a certified copy of the Certificate of Incorporation for **ITHERIA INVESTMENTS COMPANY LIMITED** which shows the respective shareholding of all persons beneficially entitled to the estate herein so that the record is complete.

[4] Having said the foregoing, let me, albeit in passing, convey a subtle legal hint. Under section 56 and 57 of the Law of Succession Act, there is restriction on issuance of grant to a body corporate except the public Trustee and a Trust Corporation. The said sections are reproduced below:-

***56. No grant to certain persons***

***(1) No grant of representation shall be made***

***(a) to any person who is a minor, or of unsound mind, or bankrupt; or***

***(b) to more than four persons in respect of the same property.***

***(2) No grant of letters of administration, with or without the will annexed, shall be made to a body corporate other than the Public Trustee or a trust corporation.***

***57. Grant to body corporate***

***No grant of representation shall be made to a syndic or nominee on behalf of a body corporate:***

***Provided that, where a body corporate applies for a grant of probate or (in the case of a trust corporation) letters of administration, the application may be signed, and any necessary affidavits may be sworn, by an officer authorized in that behalf by the body corporate or the directors or governing body thereof.***

Again, the proviso to section 71(1) of the Law of Succession Act requires that, in intestacy, before confirmation of grant, the identities and the respective shares of all persons beneficially entitled to the estate must be ascertained and be specified as such in the grant. See that proviso below: below-

***Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.***

These matters make me sceptical whether a stranger like a limited liability company unless it is a trust corporation should be a direct beneficiary of the estate of a deceased person. The danger with the path Nyamu Advocate has followed is that the record may not show the persons beneficially entitled to the estate and their respective shares thereto. Again, the property becomes the property of the company which will be dealt with in accordance with the Company Memorandum and Article of Association and the Companies Law; which may not necessarily accord with the intent or purpose of the law on inheritance. I

could be wrong on this but it is food for thought.

[5] In the upshot I allow rectification to the extent stated in paragraph 2 above. It is so ordered.

**Dated, signed and delivered in open court at Meru this 18<sup>th</sup> day of December, 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Nyamu advocate for Petitioner

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**F. GIKONYO**

**JUDGE**