



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 108 OF 2008

IN THE MATTER OF THE ESTATE OF ELIAS NJIRU CHANDI (DECEASED)

SILVUN KAMAU KANGETHE.....APPLICANT

VERSUS

PETER NDWIGA CHANDI

POLYCARP KARIUKI CHANDI.....RESPONDENTS

RULING

1. The applicant, who is a beneficiary has brought this application by way of chamber summons under section 74 of the Law of Succession Act (Cap 160) Laws of Kenya and under Rules 43 and 73 of the Probate and Administration Rules. The application seeks rectification of the confirmed grant dated 21st July 2011, which rectification is expressed as follows: “The ½ share of Silvan Kamau Kangethe in Embu/Municipality/1112/75 be transferred to David Matu Wahome.” Additionally, the application seeks that costs of this application be provided for.

2. The application is grounded on the grounds set out on the face of the chamber summons. In ground 1 the applicant has stated that he is desirous of transferring his said share to David Matu Wahome. In ground 2 the applicant has stated that it is necessary to effect the transfer without the costs of double transfer to the applicant and then to the intended transferee. In ground 3 the applicant has also stated that none of the other beneficiaries will be prejudiced in any way by this application.

3. The application is anchored in the supporting affidavit of the applicant. In that affidavit, the applicant has deponed that he is a beneficiary in the estate of the deceased in respect of a ½ share of the property land ref No Embu/Municipality/1112/75. He has also deponed that he wishes to transfer his share to one David Matu Wahome. He has further deponed that although the grant has been confirmed, no actual distribution has been effected in the Land Registry. He has further deponed that it is desirable to rectify the grant to reflect his application to have his share transferred to David Matu Wahome. Finally, he has deponed that the beneficiaries will not suffer any prejudice by the proposed changes.

4. The administrators have in their joint replying affidavit opposed his application. They have deponed that the third administratrix is their late mother. They have further deponed that on 21st July 2011, they recorded a consent order to the effect that the applicant/protestor was to pay for the costs of the subdivision and transfer of ½ share of plot No Embu/Municipality/1112/75 to his name. They have also deponed that the applicant has not done so to date. Furthermore, they have deponed that they do not want to be co-owners of the said plot with the said David Matu Wahome, who is a stranger to them. Finally, they have deponed that the applicant should carve out his share of the said plot in accordance with the consent order and thereafter transfer it to whoever, he wishes without involving them.

5. In the light of the foregoing evidence, the issues of determination are whether:

1. The applicant is entitled to the order sought.
2. The effect of the consent order
3. The role of the two administrators in the matter.
4. Who should bear the costs of this application

6. The consent entered into between the parties on 21st July 2011 is binding on both the administrators and the applicant. In this regard, the provisions of **section 74 of the Law of Succession Act** (Cap 160) Laws of Kenya are relevant. They provide 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.”***

7. In terms of that consent order, the parties are bound to carry out their obligations. The applicant has to abide with the the terms of that consent. It therefore follows that the applicant has no right to apply for rectification of the grant. It is also clear from section 74 that rectification is only allowed in respect of errors in names and other. Secondly, it is also allowed in setting out the time and place of the deceased's death. Thirdly, it is also allowed for the purpose in a limited grant.

8. In the circumstances, I find that the answer to the first issue for determination is that the applicant has not made out a case for the grant of the order sought. I also find in answer to the second issue that the applicant must comply with the terms of the consent order. I further find that the court is not entitled to interfere with the duty of the administrators in distributing to the beneficiaries their rightful shares including the applicant. The upshot is that this application is dismissed with no order as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **26th** day of **September 2016**

In the absence of Mr Njage for the applicant and in the presence of Mr. Kathungu for the Respondent

Court clerk Njue

J.M. BWONWONGA

JUDGE

26.09.16