

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 202 OF 1988

IN THE MATTER OF THE ESTATE OF JEREMIAH GITAU MUHIA – (DECEASED)

RULING/DIRECTIONS

1. This matter is for directions with regard to representation.
2. The issue of directions arises from the Summons for Rectification of grant dated 23rd January 2013 filed by Paul Mwangi Gitao. He seeks a string of changes in the cause – that he substitutes a dead administrator, that the names of two deceased heirs be removed from the list of beneficiaries and that two dead heirs be substituted with the names of their widows.
3. It must be stated from the outset that the application dated 23rd January 2013 is incompetent in view of *Section 74* of the Law of Succession Act. The effect of *Section 74*, as read with Rule 43(1) of the Probate and Administration Rules, is that rectification of a grant can only be sought by the holder of the grant sought to be rectified. The applicant herein, Paul Mwangi Gitao, is not the holder of the grant sought to be rectified and he cannot therefore obtain the orders that he is seeking.
4. However, I do note that one administrator has died. The dead administrator represented one of the two houses that make up the family of the deceased person the subject of these proceedings. It is imperative that that house be represented in the administration of the estate. The family has failed to agree on the matter. I do note that the said Paul Mwangi Gitao comes from the side of the family represented by the dead administrator.
5. The directions that I will give in the circumstances are:-
 - (a) That Paul Mwangi Gitao be and is hereby appointed a co-administrator of the estate of the deceased in the place of his deceased brother, David Muhia Gitao.
 - (b) That a fresh grant of letters of administration intestate shall issue upon Paul Mwangi Gitao and Joseph Muhia Gitao.
 - (c) That the rest of the prayers in the application are untenable as they are sought in an application filed by a person who had no capacity to bring an application seeking the orders of the character sought in the said application.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE

