

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 2171 of 1998

IN THE MATTER OF THE ESTATE OF PHARES NJOROGE KAMAU (DECEASED)

AND

GERALD KARIUKI.....1ST APPLICANT

DAVID KAMAU.....2ND APPLICANT

RULING

The applicant has come to court by an application dated 30th October 2012, which seeks rectification of the grant made on 14th February 2000 and confirmed on 3rd April 2001. The basis of the application is that the surveyors while subdividing the properties the subject of these proceedings as proposed in the Certificate of Confirmation of Grant dated 3rd April 2001, established that the proposed subdivisions were uneconomical and suggested that the proposed that the said properties be subdivided into viable portions.

The law on rectification or alteration of grants is **section 74 of the Law of Succession Act** and that is why the application is premised on that provision. The procedure for obtaining rectification is to be found in **Rule 43 of the Probate and Administration Rules**. Errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of the deceased's death. The court can only order rectifications in the situations envisaged in **section 74**. The power to order rectification is limited to those situations. The power given by that section is not general.

I find that there was no error in this matter. What has happened is that the subdivisions proposed by the administrators have turned out to be unviable, and the surveyors have suggested that the subdivision be revisited with a view to proposing subdivisions that are economically viable. The surveyors came up with their own proposals that are more economically viable. This rectification application is meant to effect the surveyors' proposals. This does not amount to an error. The circumstances that have arisen cannot be dealt with under **section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules**. The grant of letters of administration intestate cannot be rectified in the manner proposed to accommodate the changed circumstances.

Koome J held in *In the Matter of the Estate of Muniu Karugo (Deceased) Nairobi High Court succession cause number 2668 of 1997* that rectification only deals with obvious errors and it cannot be used to fundamentally change the character of the grant. I agree entirely with that position. The proposed changes will fundamentally change the confirmed grant. Where such fundamental changes are contemplated, then the certificate issued upon the confirmation of the grant ought to be cancelled to pave way for a fresh confirmation application where the proposed changes can be accommodated.

To ease the matter for the administrators, I will revoke the Certificate of Confirmation of Grant dated 3rd April 2001. The administrators may thereafter apply for confirmation of the grant along the lines proposed in the application dated 30th October 2012.

The application dated 30th October 2012 is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND JANUARY 2013.

**W MUSYOKA
JUDGE**