



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 73 of 2005

IN THE MATTER OF THE ESTATE OF GITICHE MBAU -(DECEASED)

RULING

Sylvia Wangari Mbau, one of the administrators of the estate of the deceased, has moved the court for rectification of the grant confirmed on 9th December 2008. She specifically seeks the rectification of the certificate of confirmation of grant. Her summons for rectification is dated 4th September 2012 and it is supported by her own affidavit sworn on even date.

She would like the property described in the certificate as **NAIROBI/BLOCK 72/2425** to be removed and replaced with “*shares in Manyatta Paradise Limited*”. She says that the property **NAIROBI/BLOCK 72/2425** was not registered in the name of the deceased but in that of Manyatta Paradise Limited, in which company the deceased had subscribed one ordinary share in the nominal capital. She has attached to her application a copy of the certificate of lease dated 14th December 1992 which shows that **NAIROBI/BLOCK 72/2425** is registered in favour of Manyatta Paradise Limited. She has also attached a copy of the Memorandum and Articles of Association of Manyatta Paradise Limited to show that the deceased had subscribed to one (1) share in the company while the other share belonged to the applicant.

The application dated 4th September 2012 was served on the advocates on record for the other parties in this cause, this is to say Messrs Muchangi Nduati & Co. Advocates for 2nd and 3rd respondents, and Messrs Kimanthi & Associates, Advocates for the 1st respondent. There is an affidavit of service on record returning the said service. The other parties have not filed replies to the application.

The application is premised on **Sections 47** and **74** of the Law of Succession Act and Rules 43, 49 and 73 of the Probate and Administration Rules. **Section 47** sets out the broad jurisdiction of the High Court to entertain applications and determine disputes under the Act and to pronounce decrees and orders based on such applications and disputes. **Section 74** is more pertinent. It provides for the errors that this probate court may rectify. It states as follows:-

***“Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose of a limited grant, may be rectified by the court”.***

Rule 43 effectuates **Section 74** by setting out the procedure to be followed by a party who seeks rectification of a grant. Rules 49 and 73 are really not relevant as they only come in as aid where the procedure is not clear. As rectification is expressly provided for in **Section 74** and Rule 43, there is no need to revert to Rules 49 and 73 of the Probate and Administration Rules.

What then needs to be considered is whether this is a proper case for rectification. Property **NAIROBI/BLOCK 72/2425** was previously described as an asset belonging to the deceased. However, title documents show that it does not belong to him, but to a limited liability company in which he had an interest. What the deceased owned is not the landed property but a share in the company which owned the landed property. To my mind this is an error in description, which ideally brings this matter within the realm of **Section 74** of the Law of Succession Act. This is a matter that this court has jurisdiction under **Section 47** to determine and to make orders on.

I find that the applicant has made a case for rectification. I order that the property known as **NAIROBI/BLOCK 72/2425** be removed from the schedule to the certificate of confirmation dated 9th December 2008 and substituted with ***“shares in Manyatta Paradise Limited”***.

Orders accordingly.

**W.M. Musyoka**  
**Judge**

**DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF FEBRUARY, 2013.**