



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1010 of 2011

IN THE MATTER OF THE ESTATE OF GEOFFREY KINUTHIA NYAMWINGA (DECEASED)

RULING

The applicant has come to court by an application dated 31st December 2012, seeks rectification of the grant confirmed on 16th July 2012. The application seeks the amendment of the grant in three respects:

- a) Amendment of the description of the property Longonot/Kijabe Block 2/65239 (Utheri wa Lari) to read Longonot/Kijabe Block 2/6523 (Utheri wa Lari),
- b) Insertion of a property – Karai/Gikambura/3836 – in the certificate of confirmation of grant,

In the affidavit in support of the application, the administrator of the estate deposes that the certificate of confirmation of grant has an error with respect to the description of one of the properties, Longonot/Kijabe Block 2/6523 (Utheri wa Lari), which erroneously appears in the certificate as Longonot/Kijabe Block 2/65239 (Utheri wa Lari). She also avers that one asset was inadvertently left out of the confirmation, that is to say Karai/Gikambura/3836. She proposes that this asset be included in the certificate.

The law on rectification or alteration of grants is **Section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules**. **Section 74** provides:

‘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...’

Rule 43(1) of the Probate and Administration Rules:

‘Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of the death of the deceased, or in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons...’

What these provisions mean is that 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 effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.

I find that there an error in this matter. There is an error with respect to the description of one of the

properties. The property is listed in the certificate as Longonot/Kijabe Block 2/65239 (Utheri wa Lari), yet its real description is Longonot/Kijabe Block 2/6523 (Utheri wa Lari). This is an error that can be dealt with under **Section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules**.

The certificate of confirmation of grant is said to omit a property belonging to the deceased, Karai/Gikambura/3836. The omission relating to this property cannot be dealt with under is **Section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules** as it is not an error in names of persons or places, nor to descriptions of persons, things or places. It cannot be handled be under these two provisions.

A grant and a certificate of confirmation of grant are court orders taking the form of a certificate. The grant is made after the court allows the petition for a grant of representation, whether it be of letters or of probate. A certificate of confirmation of grant is issued following a successful application for confirmation of the grant. The two are not pleadings, and therefore the principles which govern their rectification are not those applying to amendment of pleadings but those that apply to amendment of court orders.

A court order made by a civil court can only be amended through a review application, and not through an application for amendment of pleadings. The Law of Succession Act does not provide for amendment of pleadings in succession causes, but it does provide amendment of grants. This is through either **Section 74 of the Law of Succession Act** to the extent provided in that provision, or through a review application through **Order 44 of the Civil Procedure Rules**. **Order 44** was formerly **Order XLV**, which is one of the provisions of the Civil Procedure Rules imported into succession practice through **Rule 63 of the Probate and Administration Rules**.

Where a proposed amendment of a grant cannot be dealt with under the provisions of **section 74 of the Law of Succession Act**, the applicant ought to approach the court under **order 44 of the Civil Procedure Rules**. A review under **order 44 of the Civil Procedure Rules** may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this provision – **order 44 of the Civil Procedure Rules** on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant – the omission of the two properties from the confirmation application and the certificate of grant respectively.

In view of all that I have stated above I will make the orders:

- 1) That the certificate of confirmation of grant dated 16th July 2012 shall be altered by removing the property Longonot/Kijabe Block 2/65239 (Utheri wa Lari) and replacing it with Longonot/Kijabe Block 2/6523 (Utheri wa Lari),
- 2) That the said certificate of confirmation of grant dated 16th July 2012 shall be reviewed so that the property Karai/Gikambura/3836 shall be included in said certificate.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF APRIL, 2013.

W. MUSYOKA
JUDGE