



## REPUBLIC OF KENYA

### High Court at Nairobi (Nairobi Law Courts)

#### Succession Cause 137 of 2007

### IN THE MATTER OF THE ESTATE OF JOHN KIREHU GUCHU (DECEASED)

#### RULING

The applicants have come to court by an application dated 6<sup>th</sup> November 2012, which seeks rectification of the grant confirmed on 14<sup>th</sup> December 2011. The application seeks to have included certain assets that were omitted from the list of assets in the confirmation application.

In the affidavit in support of the application, the applicants aver that the assets were omitted from the confirmation application. It would appear that the assets were in fact listed in the petition for grant. They would like the grant rectified to have these assets included in the certificate and distributed.

The law governing rectification or alteration of grants is **Section 74 of the Law of Succession Act**. The procedure for obtaining rectification is to be found in **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...’*

According to these provisions, 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.

It is my view that there is no error in this matter. The property sought to be included in the certificate of confirmed grant was not miss-described but omitted by the applicant when she applied for the grant. The omission is not a circumstance covered by **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 by the applicants.

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 can only be amended through a review application. 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. This means that where the amendment sought of a grant is not covered by 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 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 should have moved the court under this provision – **order 44 of the Civil Procedure Rules** on the ground that there is discovery of new and important matter or that there exists a sufficient reason for review of the grant.

As the grant cannot be rectified under the provisions of the law under which the application is premised, the same is liable to dismissal. However, as there are good grounds under **order 44** for a review of the grant, I will exercise the inherent power saved under **rule 73 of the Probate and Administration Rules**, and order a review of the certificate of confirmed grant dated 14<sup>th</sup> December 2011 to include the omitted assets and to have them devolve upon Florence Naropi Kirehu.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>th</sup> DAY OF APRIL, 2013.**

**W. MUSYOKA**  
**JUDGE**