

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 4 OF 1993

**IN THE MATTER OF THE ESTATE OF RICHARD WAHOME KAGATHI ALIAS RICHARD
W. K. WAHOME (DECEASED)**

**MARY WANGECHI WAHOME.....
PETITIONER/APPLICANT**

RULING

Pursuant to the provisions of *rules 14 (i), 59 and 73* of Probate and Administration rules, Mary Wangechi Wahome, the Petitioner herein, took out the Summons General dated 14th March 2011 in which she applied for leave to amend the petition so that the following asset which was excluded in the petition is included as an asset of the Estate:

Two shares in **Plot No. 16 Kairia** in the name of Kiyu Trading Co. formerly known as Kiyu Grade Cattle Buying Self Help Group.

The Petitioner further proposed for the aforesaid asset to be shared in equal measure between herself and one Julius Ngunjiri Wahome. The Summons General is supported by the affidavit of the Petitioner.

I have considered the oral submissions of Mr. Peter Muthoni, learned advocate for the Petitioner. I have also considered the material placed before me. Basically, the Petitioner is seeking for leave to amend the petition and the certificate of the confirmed grant to include the asset left out. The record shows that the Petitioner had previously filed the Summons General dated 15th July 2010 in which she applied for the Petition to be amended to include the same asset which had been erroneously left out during the filing of the petition. The aforesaid application was withdrawn after which the current one was filed. Under *rule 14(1)* of the Probate and Administration Rules, an applicant for a grant may make an application to amend the application before the making of the grant. The scenario the Applicant is faced with is not the one envisaged under *rule 14 (1)*. The Applicant admits that the grant was made to her on 23rd February 1993 and confirmed on 16th November 1993. In fact the Applicant successfully applied for the certificate of the confirmed grant to be amended on 9th October 2009, whereof the name of the deceased which had initially been stated to be Richard Wahome Kagathi was amended to read Richard Wahome Kagathi alias Richard W. K. Wahome. The Petitioner has now come before this court seeking to amend the petition. I think the application is improper and inappropriate in the circumstances of this case. The application can only be sought where the grant has not been issued which is not the case here. It is worse in this cause in that the grant has already been confirmed. In a nutshell the petition cannot be revisited because the same has been concluded. I equate the Petitioner's application to a civil suit which has been heard and determined giving rise to a judgment. In such a case one does not expect the Plaintiff to go back to court to apply for the Plaint to be amended, because the suit no longer existed. If I understood the Petitioner well, her problem is that she has administered the Estate leaving out certain properties unadministered. If well advised, not all is lost for the Applicant, because she should be able to invoke the relevant provisions of the law governing unadministered assets of an estate.

In sum, the Summons General dated 14th March 2011 lacks merit. The same is ordered struck out and dismissed with no order as to costs.

Dated and delivered at Nyeri this 16th day of March 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Peter Muthoni learned advocate for the Petitioner.

J.K. SERGON
JUDGE