



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI (NAIROBI LAW COURTS)

**Succession Cause 1702 of 2007
IN THE MATTER OF THE ESTATE OF SILVESTER THUO NJAU (DECEASED)**

RULING

Before me is a summons for rectification of grant dated 22nd September, 2009 and filed on the same date. It was filed by Pauline Wamaitha Igiria and Peter Kiraki Thuo, who are the administrators in this succession cause. The law and section of the law under which the application was filed is not stated. The orders sought are as follows –

1. THAT the grant of letters of administration issued to Pauline Wamaitha Igiria and Peter Kiraki Thuo on 4th day of October, 2008 be rectified by changing the mode of distribution.
2. THAT the costs of this application be in the cause.

The application is supported by an affidavit jointly sworn by the applicants on 22nd September, 2009. It was deposed in the said affidavit that the administrators and beneficiaries of the estate had agreed to rectify the confirmed grant so as to adopt a new mode of distribution. It was deposed specifically that the deceased wished that the assets of the estate be held in trust for the children of the beneficiaries as follows –

- a) L.R. Kiambaa/Kanunga 152

To be registered in the names of Michael Thiongo Thuo for himself and to hold in trust for his children namely:

- (i) Anthony Kamau Thiongo
- (ii) Sylvester Thuo Thiongo

- b) LR. Kiambaa/Kanunga/1553

To be registered in the names of Patrick Njoroge Thuo for himself and to hold in trust for his children namely:-

- (i) Pauline W. Igiria
- (ii) Anne W. Munyori

- c) L.R. Kiambaa/Kanunga/1554

To be registered in the names of Peter Kirako Thuo for himself and to hold in trust for his children namely:

- (i) Sylvester Thuo Kiraki
- (ii) Elizabeth Wanjiru Kiraki
- (iii) Teresia Wanjiku Kiraki

- d) L.R. Kiambaa/Kanunga/1555

- (i) Patrick Njoroge Thuo

(ii) Peter Kiraki Thuo

e) L.R. Kiambaa/Kanunga/1557

To be registered in the names of Mary Wanjiru Thuo for himself and to hold in trust for his children namely –

(i) Sylvester Thuo Wainaina

f) L.R Kiambaa/Kanunga/1694

(i) Hannah Wanjiru Njau

(ii) Sylvester Thuo Njau

g) L.R Kiambaa/Kanunga/1558/1701

To be registered in the names of Francis Njehia Thuo for himself and to hold in trust for his children namely:

(i) Sylvester Thuo Njihia

(ii) Teresia Muthoni Njehia

(iii) Esther Wamaitha Njehia

h) Shares of Subukia Ref.681 and 1064

To be registered in the names of –

(i) Pauline Wamaitha Igiria 861

(ii) Anne W. Monyori 1064

There is a consent to be proposed rectification of grant dated 22nd September, 2009 signed by Michael Thiongo Thuo, Patrick Njoroge Thuo, Mary Wanjiru Thuo, Christine Waitherero Rurigi, Francis Njehia Thuo, and Anne Wambui Munyori

In this particular succession cause, letters of administration were confirmed and a certificate of confirmation of grant was issued on 23rd June, 2008. The assets, which were real property or land assets, investment shares, as well as funds in accounts with Standard Chartered Bank and Kenya Post Office Bank were distributed to the beneficiaries named in the certificate of confirmation of grant as Michael Thiongo Thuo, Patrick Njoroge Thuo, Peter Kiraki Thuo, Mary Wanjiru Thuo and Pauline Wamaitha Igiria either absolutely or jointly.

Indeed, this court can alter or rectify or amend a grant of letters of administration, whether or not the same has been confirmed. This is provided for under sections 74 to 76 of the Law of Succession Act (Cap.160).

The provisions that deal with rectification or alterations of grant are sections 74 and 75, which provide as follows –

“74. 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, and the grant of presentation, whether before or after confirmation, may be altered and amended accordingly.

75. If, after the grant of letters of administration with the will annexed or after confirmation thereof, a codicil be discovered it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.”

The applicants have come to court to try to include their own descendants in the certificate of confirmation of grant, to reflect what they think the deceased would have wished.

This application will fail. The first reason is that there is no alleged errors of names and descriptions, or in the time of the deceased’s death, that would under section 74 of the Act enable this court to consider rectification of the grant. I will observe that this is not a limited grant and therefore an error in the purpose of the grant is not relevant here. In my view the errors of names would be the names of the deceased and beneficiaries, and descriptions would be descriptions of such things as assets and liabilities. Providing for

trusts for descendants of the actual beneficiaries is not within the purview of section 74 of the Act. There is therefore no relevant reason to amend or rectify a grant.

The second reason is that, though the applicants claim that the deceased wanted trusts to be created, no will or codicil has been exhibited or filed in support of the request for rectification of the grant as required under section 75 of the Act. Therefore, again there is no legal reason to amend or rectify the grant

On the above two reasons, the application for rectification of grant will fail. The assets distributed to the applicants and beneficiaries at confirmation of grant became their assets, and they are free to divide them to their children, or hold them in trust for them without coming to court in this succession cause. They are better advised to seek legal advice from practicing lawyers on the issue. On my part, I find no merits in the application, and dismiss the same.

Dated and delivered at Nairobi this 19th day of January, 2010.

George Dulu

Judge