

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Succession Cause 309 of 2008

IN THE MATTER OF THE ESTATE OF FATUMA AHMED (DECEASED)

RULING

The applicant, through his advocates, M/s. Balala & Abed Advocates, filed Summons for Rectification of Grant, under ss.74, 75 and Rule 43(i) of the Law of Succession Act (Cap.160, Laws of Kenya).

It was requested that the grant of probate of written will issued to *Yunus Omar Bashir* and *Abdulwahid Omar Yunus* in this matter on 29th May, 2009 be rectified: It was stated that the name of the second person shown as proposed executor, in the affidavit in support of the petition for Letters of Administration sworn on 25th August, 2008 was included by oversight, and so should be removed. It was prayed that the grant of probate of written will issued on 29th May, 2009 be amended to reflect only *Yunus Omar Bashir* as the executor of the estate of Fatuma Ahmed.

The application was supported by the affidavit of the applicant's advocate, *Mohammed Salim Balala*, sworn on 5th August, 2009.

The deponent states that a grant of probate was made to *Yunus Omar Bashir* and *Abdulwahid Omar Yunus* before the High Court on 29th May, 2009; the said grant "contains errors as to ...the time of filing [the] petition and the affidavit in support of the petition" – the deponent's office had "made an error by making *Abdulwahid Omar Yunus* a second applicant when the will clearly states that the 1st applicant, *Yunus Omar Bashir* [is to be] the sole executor and trustee of the deceased". This error is explained as having arisen from the fact that the name of *Abdulwahid Omar Yunus* appeared as a beneficiary next to the name of the trustee of the will. It is deponed that the Court had proceeded to issue a grant of probate to both *Yunus Omar Bashir* and *Abdulwahid Omar Yunus*, and this was in departure from the written will left by the deceased.

The content of the summons speaks for itself: the grant of probate, as issued, was in departure from the terms of the will itself; and the deponent has explained how the error came to be made. I will grant the application, and make orders as follows:

1. *The grant of probate of written will issued to Yunus Omar Bashir and Abdulwahid Omar Yunus on 29th May, 2009 is hereby rectified by excluding the name of Abdulwahid Omar Yunus, leaving as executor and trustee only Yunus Omar Bashir.*
2. *The costs of this application shall be in the cause.*

DATED and DELIVERED at MOMBASA this 30th day of October, 2009.

J. B. OJWANG

JUDGE

Coram: *Ojwang, J.*

Court Clerk: *Ibrahim*

For the Applicant: *Mr. Abed*