



REPUBLIC OF KENYA



**In re Estate of Nikodemo Amasa (Deceased) (Succession Cause
369 of 2009) [2024] KEHC 7588 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 369 OF 2009**

SC CHIRCHIR, J

JUNE 20, 2024

**IN THE MATTER OF THE ESTATE OF NIKODEMO
AMASA (DECEASED)**

RULING

1. The Amended summons dated 27th July 2023 seeks for the substitution of the Administrator of the deceased's Estate . The Administrator is reported to have since died. It further seeks for redistribution of the property known as Kabras/ Shamberere /25,between the dependants of the Deceased . And finally it prays for the amendment of the grant and rectification of the certificate of confirmation of Grant.
2. The Application is brought by one Rosemary Shikasi Ayimoi, (1st Applicant), Judith Shikulishienyi Onzere (2nd Applicant) and Elizabeth Kanyasi Mwayitsi (3rd Applicant).
3. The Application is supported by the Affidavit of the 1st Applicant sworn on 6th February 2023, and another, sworn jointly by the other two Applicants on 2nd may 2023.
4. It is the Applicants' case that the then Administrator of the deceased's Estate, One Javan Onzere Amasa died on 13th June 2014. They have attached a death certificate for the said Administrator issued on 24th July 2024. They have stated that the Administrator died before completing the Administration process.

Determination

5. In paragraph 9 of her affidavit , the Applicant seeks that the deceased be substituted by herself and her co- Applicants as Administrators of the deceased's Estate. However the 2nd and 3rd Applicants in paragraph 2 and 5 of their Affidavit state that they want their sons, namely, Walter Omega Javan and Ronald Amasa Kanyasi to take up the Administration alongside the 1st Applicant.
6. Thus the summons is expressed to be supported by the two affidavits as aforesaid, but there are contradictions between the two Affidavits on the proposed substitutes.
7. Further, and it follows, the Affidavit of the 2nd and 3rd Applicants are at variance with prayer 2 of the Application in respect of the proposed Administrators.



8. In view of the observations I have made in paragraph 4, 5 and 6 hereof, the orders sought are incapable of being granted, as there is no meeting of the minds of the Applicants, as to what they want from this court.
9. Finally, whereas the Applicants in prayer 4 of the summons are praying for rectification, it is evident from paragraph 2 and 4 of the 2nd and 3rd Applicants Affidavit that what they are seeking is redistribution of the Estate property and not rectification. It is clear from paragraph 3 and 4 of the Affidavit sworn by the 2nd and 3rd Applicants that they want to bring in new beneficiaries.
10. *In Re Estate of John Mwaka Koka (Deceased)* [2019] eKLR, the court held:

“... it is clear from the orders sought in this application that what is sought by the applicant herein is strictly speaking not an order for rectification but one for review. Section 74 of the Law of Succession Act which deals with rectification states as follows:-

“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose of in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered or amended accordingly.”
11. Without belabouring the above position, it is clearly evident that what the Applicants herein are seeking for redistribution or review, and not rectification.
12. Consequently the summons dated 27th July is incompetent. The same is hereby struck off.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 20TH DAY OF JUNE 2024.

S. CHIRCHIR

JUDGE

In the presence of:

Godwin- Court Assistant

Ms Ayako for Mr. Biketi for the Administrators.

