



REPUBLIC OF KENYA



KENYA LAW
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**Kinyanjui & 3 others v Richu (Succession Cause 673 of 1990)
[2023] KEHC 17935 (KLR) (Family) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 673 OF 1990
MA ODERO, J
MAY 5, 2023
N THE MATTER OF THE ESTATE OF JOSEPH GITAU
RICHU (DECEASED)**

BETWEEN

**SAMUEL KINYANJUI 1ST APPLICANT
EDWARD NDUNGU 2ND APPLICANT
PETER KIAMBUTHI 3RD APPLICANT
GEOFFREY RICHU 4TH APPLICANT**

AND

GEOFFREY RICHU RESPONDENT

RULING

1. Before this court is the summons for Rectification of grant dated December 14, 2021 by which the applicant Joseph Lawrence Gichanga Richu seeks the following orders:-
 1. That the grant of probate (or letters of administration) issued to Geoffrey Richo Gitau (Deceased) of P.O. Box 7369, Nairobi in this matter and confirmed on the November 15, 1991, be rectified in the following respects to read as Joseph Lawrence Gichanga Richu being the new administrator as provided for by Rule 43 (1) of the Probate and Administration Rules.
 2. That the name of Geoffrey Richo Gitau (deceased) be removed and replaced by or with the name Joseph Lawrence Gichanga Richu
 3. The cost of this application be provided for.”



2. The summons was supported by the affidavit of even date sworn by the applicant.
3. The respondents Samuel Kinyanjui, Edward Ndung'u and Peter Kiambuthi all opposed the application through the replying affidavit dated May 10, 2022 sworn by the 3rd respondent.
4. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated January 25, 2023 whilst the respondents relied upon their written submissions dated May 10, 2022.

Background

5. This succession cause relates to the estate of the late Joseph Gitau Richu (hereinafter 'the Deceased') who died intestate at the Kenyatta National Hospital on November 30, 1985.
6. Following the demise of the deceased Grant of letter of Administration were on August 7, 1990 issued to Geoffrey Richo Gitau which Grant was duly confirmed on November 15, 1991.
7. The named Administrator passed away on August 11, 2021. A copy of his Death Certificate Serial Number 1204107 is annexed to the applicants supporting affidavit (Annexure 'JLGR-2').
8. The applicant who is a son to the late administrator now prays that the grant issued to his father be rectified and a new grant be issued naming the applicant as the administrator of the estate of the deceased.
9. The respondents who are the beneficiaries of the estate of the deceased opposed the application on grounds that the applicant has not obtained letters of administration in respect of the estate of his late father. The respondents pray that they all be named as administrators.

Analysis and Determination

10. I have carefully considered the summons before this court, the reply filed by the respondents as well as the written submissions filed by both parties.
11. Applications for 'rectification' of a grant are covered by section 74 of the *Law of Succession Act*, cap 160, Laws of Kenya which provides as follows:-

“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; and the grant of representation whether before or after confirmation, may be altered and amended accordingly.”
12. The procedure for seeking the relief is set out in Rule 43 (1), which provides that:-

“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 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....”
13. Therefore the provisions in section 74 and Rule 43 are extremely restricted. They permit rectification of grants in three clearly defined cases:-
 - (a) errors in names and descriptions of persons or things;
 - (b) errors as to time or place of death of the deceased;



- (c) in cases of a limited grant, the purpose for which such limited is made;”
14. The applicant herein is seeking to have himself substituted as administrator of the estate in place of his late father. This type of substitution is not covered by section 74. Where a sole administrator of a estate dies before completing the administration of the estate then the correct procedure for an applicant is to apply to for a grant of letters of administration “de bonis non”.
 15. Moreover a grant of representation is issued specifically to the person named in the grant. The grant cannot be passed on or ‘inherited’ by another person. Where a sole administrator of an estate dies then the grant becomes useless and inoperative. That grant must be revoked and a fresh grant issued in the name or names of the new Administrator (s). A new administrator cannot be appointed under a summons for rectification of grant.
 16. *In Re Estate of Peris Wanjiku (Deceased)*, Nairobi High Court Succession Cause No 2349 of 2001. Hon Lady Justice Mary Ang’awa (as she then was) stated that :-

“where an administrator dies before completion of administration. The right course of action should be to seek his replacement through an application for grant of administration “de bonis non”.
 17. Therefore the prayer for substitution of the Administrator cannot be entertained under this summon for rectification of grant. The Applicant must follow the correct procedure. He must apply for a revocation of the now inoperative grant and then seek issuance of a fresh grant “de bonis non” in the name of the new administrator. The applicant ought to sit down with all the other beneficiaries to agree on a new administrator of the estate.
 17. Finally this summons for rectification is dismissed in its entirety. Each party to bear their own costs.

Dated in **Nairobi** this 5th day of **May, 2023**.

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MAUREEN A. ODERO

JUDGE

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