



REPUBLIC OF KENYA



In re Estate of Peter Clement Kamau Gitau alias Peter C. Kamau Gitau (Deceased) (Succession Cause 201 of 2015) [2023] KEHC 24434 (KLR) (Family) (19 September 2023) (Ruling)

Neutral citation: [2023] KEHC 24434 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 201 OF 2015
EKO OGOLA, J
SEPTEMBER 19, 2023
IN THE MATTER OF THE ESTATE OF PETER CLEMENT
KAMAU GITAU ALIAS PETER C. KAMAU GITAU (DECEASED)**

**IN THE MATTER OF
TERESIA WAIRIMU KAMAU APPLICANT**

RULING

1. The Summons before this Court are dated 31st May 2023. The Applicant prays for the following:-
 - a. That the letters of administration issued to Teresia Wairimu Kamau on 27th May 2015 be rectified for the names of the deceased to read as Peter Clement Kamau Gitau alias Peter C Kamau Gitau.
 - b. That the Certificate of Confirmed Grant issued to the said Teresia Wairimu Kamau in this matter on 25th October 2016 be rectified to include in the schedule of assets ½ of Dagoretti/Riruta/5403 and the property be registered in the name of John Ndung'u Kabuthi.
 - c. That costs be in the cause.
2. The Summons were supported by the Affidavits sworn by the Applicant dated 31st May 2023 and 23rd June 2023.
3. Peter Clement Kamau Gitau died intestate on 24th March 2012. He was survived by his widow, three sons and three daughters. His widow, the Applicant was issued with grants of letters of administration intestate on 27th May 2015. The said grant was later confirmed on 25th October 2016.
4. The Certificate of Confirmed Grant states the name of the deceased as 'Peter Clement Kamau Gitau'. The Applicant averred that the deceased was also known as 'Peter C Kamau Gitau'. Further to this, the Applicant has deposed that the property known as ½ of Dagoretti/Riruta/5403 was not included



in the schedule of assets as she thought that the said property had been sold during the lifetime of the deceased. However, the said property was never transferred to the purchaser. It is for these reasons that the Applicant prays for the Confirmed grant to be rectified.

Determination

5. I have considered the Summons and the Affidavits in Support. The question to be answered is whether the rectification sought could be carried through under section 74 of the *Law of Succession Act* and Rule 43(1) of the *Probate and Administration Rules*?

“74. Errors may be rectified by court:

Errors in names and descriptions, or in setting forth 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.”

“Rule 43(1) provides as follows:

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 the time or place of death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was made.”

6. From the language of section 74 and Rule 43(1), the scope of rectification of grants of representation is limited to errors in names and descriptions, in setting forth the time and place of the deceased’s death, or the purpose in a limited grant. I may add that such other minor errors in that genre could also be rectified.
7. Is an omission of a name an error? It would be an error if say a word in the full name of a person is omitted. In this case, the Applicant seeks to have the name of one of the deceased included ‘alias Peter C Kamau Gitau’. It is not disputed that these names refer to one and the same person. Such rectification falls under errors that may be rectified under section 74. I hereby grant prayer (a) and order that the name of the deceased be rectified to read ‘Peter Clement Kamau Gitau alias Peter C Kamau Gitau’.
8. Prayer (b) seeks to add a property to the schedule of assets. This does not fall within the ambit of Section 74, as it is not an error in names and descriptions. *In Re Estate Of Charles Kibe Karanja (Deceased)* 2015 eKLR the Court held as follows:-

“If there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”



9. Adding a property in the schedule of assets after the grant has been confirmed does not fall under the scope of rectification under section 74. However, Rule 73 of the *Probate and Administration Rules* provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

10. From the foregoing, I hereby allow prayer (b) as prayed.

11. The upshot is that the Summons dated 31st May 2023 is hereby allowed. The costs of the Application be in the Cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Mwaura for the Applicant

Gisiele Muthoni Court Assistant

