



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Hudson Andasi Inganji (Deceased) (Succession Cause 83 of 2015) [2023] KEHC 23503 (KLR) (6 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 83 OF 2015
RE ABURILI, J
OCTOBER 6, 2023
IN THE MATTER OF THE ESTATE OF HUDSON ANDASI INGANJI (DECEASED)
IN THE MATTER OF
FRIDAH ELLEN ANDASI APPLICANT**

RULING

1. The chamber summons dated August 15, 2023 seeks to amend the petition of letters of administration to include the properties which were left out during the filing of the petition in 2015.
2. I have considered the grounds and supporting affidavit and the amended schedule of distribution of the estate of the deceased Hudson Indasi Inganji.
3. The properties which are said to have been omitted are Tiriki/Hamisi/A/262, Tiriki/Hamisi/A/72 and Inganyi Star Junior Academy.
4. Although no reasons have been advanced for the failure to include the named assets, I observe that all the beneficiaries of the estate have endorsed on the schedule of distribution and the beneficiaries are the widow who is the administratrix herein Fridah Ellen Indasi and her children.
5. I further observe that in P&A 5 filed on January 21, 2015, the petitioner never listed any properties or assets of the estate of the deceased, which estate she was to administer.
6. This was a serious omission and I also blame the court for accepting the filing of incomplete documents. The Registry ought to have verified the completeness of all the succession forms before accepting to receive and register the cause.
7. This is so because one's estate cannot be administered in vain. P&A 5 is an affidavit sworn by the petitioner disclosing all the beneficiaries of the estate and listing all assets and liabilities of the estate.
8. In the instant case, only the petitioner/administrator was listed as the person surviving the deceased. However, after the grant was issued on February 10, 2015 after gazettelement on May 22, 2015 and with



- no objection to making of grant again in error as the court issuing the grant ought to have perused the documents in support of the petition for grant to ensure that assets of the estate are listed and so are the beneficiaries.
9. The beneficiaries of the estate only featured when summons for confirmation of grant was being filed on June 21, 2016. They then filed their signed consents dated June 20, 2016.
 10. On November 7, 2016, the grant was confirmed. None of the immovable properties in the estate were listed as being available for distribution.
 11. In addition, the petitioner disclosed and listed for the first time, assets of the estate being shares in KCB, Mumias Sugar Company Limited, Safaricom Company, Kenya Airways Company and motor vehicle KAJ 278X. Not a single document was filed to prove the existence of those shares or even the shares account or certificate numbers.
 12. Yet again, the petitioner *vide* summons for rectification of grant dated August 29, 2019 filed on September 25, 2019, filed for rectification of grant, the name of the deceased and the schedule No 1 of the properties to be corrected to properly read Kenya Commercial Bank shares.
 13. After that rectification, she is now back in court seeking for further rectification to include the movable properties which were omitted with no reasons for such omission.
 14. The estate of the deceased is thus being administered peaceful. No search certificate for the movable properties has been annexed.
 15. In addition, the petitioner started on a wrong footing by not listing the beneficiaries and assets of the estate and nearly ten years later is when she wants to amend the petition after confirmation and rectification of the certificate of confirmation of grant.
 16. Failure to include assets and beneficiaries of the estate of the deceased is one such fatal error that is a fertile ground for revocation and not rectification of the grant as there is no basis upon which the grant was issued and subsequently confirmed or even rectified.
 17. For the above reasons, I find that the application seeking to rectify or amend the petition cannot in any way cure the fatal defect. The application is declined and dismissed.
 18. In addition, and consequently, as the petition upon which the grant was issued and subsequently confirmed and rectified is fatally defective, I hereby proceed and revoke the grant issued on August 10, 2015 and set aside the order confirming the said confirmed grant made on October 7, 2016 and I further set aside and vacate the order rectifying the confirmed grant dated November 12, 2019.
 19. Having revoked and annulled the grant and set aside and vacated the orders confirming and rectifying the confirmation, I hereby order the petitioner to forthwith and within seven (7) days of this order return to court the grant and the certificate of confirmation and rectified certificate of confirmation of grant in as the said documents are hereby cancelled and expunged from the court record.
 20. The petitioner is at liberty to file a fresh petition before Vihiga High Court for the full administration of the estate of the deceased Hudson Indasi Inganji.
 21. This file is therefore closed and no application shall be filed herein.
 22. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 6TH DAY OF OCTOBER, 2023

R. E. ABURILI



JUDGE

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