



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. 84 OF 1995

IN THE MATTER OF THE ESTATE OF LELEI CHEPKWONY (DECEASED)

Coram: Hon. Justice R. Nyakundi

Chemweno & CO. Advocates

RULING

1. This is a matter which relates to the estate of the deceased, **LeLei Chepkwony**, who died on 14th August, 1997. Grant of letters of administration of the estate of **Lelei Chepkwony** (deceased) were issued to Augustine Lelei, Wilson Lelei and David Lelei on 14th November 1995 and confirmed on 7th December 1998.
2. The administrators have now filed the instant summons seeking to amend the certificate of confirmation of grant to include some beneficiaries to the estate particularly with respect to land parcel No. Nandi/Songoliet/4 (“Suit Property”) where it is averred that the initial beneficiaries of the said parcel of land, after the confirmation of grant sold their portions to other people who have now increased the number of beneficiaries from the initial number
3. It is further contended that the beneficiaries of the land parcel known as Nandi/Songoliet/4 have agreed to this mode of distribution and each occupies his or her portion.
4. According to the administrators, the amendment is solely for insertion of the names of the new beneficiaries to enable them effect transfer of the said titles to them.
5. The application for amendment of the certificate of confirmation of grant is not opposed.

Analysis and determination

6. The issue which arises is whether the applicants have satisfied the court on their prayer for amendment of the grant.
7. Amendment is a power granted in Section 74 in relation to errors. The section is headed: **Errors may be rectified by court** and states:
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.
8. In summary, this section provides for rectification of errors in names and descriptions, time and place of deceased’s death, purpose of limited grant but does not make any provision for rectification to add a new beneficiary.
9. In a similar application before Justice Musyoka, *In Re estate of **Charles Kibe Karanja (deceased)** [2015] eKLR* the court stated,

“If a party wishes to have the assets of the estate redistributed or 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. New assets cannot be introduced and distributed by merely rectifying the certificate of confirmation of grant. That calls for going back to the distribution orders, so as to have them altered or revised. The applicant ought to have sought a review of the

orders of 7th November, 2006 so as to include the discovered assets and to distribute them. It is only after review or revision of the said orders that an altered certificate of confirmation of grant can issue.”

10. In *Re Estate of Njagi Rurima (Deceased)* [2020] eKLR, where the court said:

“There is no provision in the Act that permits rectification or amendment by adding a new beneficiary in the grant or to redistribute the estate.”

11. In a most recent case, Justice Musyoka in **In re Estate of Makokha Nyilisi Musa (Deceased)** [2020] eKLR stated,

“The applicant herein seeks that the certificate of confirmation of grant be amended to reflect or accord with their proposed mode of distribution, which introduces two new beneficiaries, who were initially not part of the proceedings. As stated above, such an amendment goes to the core of the distribution, and completely affects or alters the distribution of the estate ordered by the court, and the same cannot, therefore, be effected through an amendment of the certificate of confirmation of grant.”

12. This court is in agreement with the above persuasive authorities, that addition of new beneficiaries cannot be said to be rectification of an error as envisaged by Section 74 of the Act.

13. However, although I find that the application for amendment of Grant is misconceived and that the correct approach for the applicants in this cause would have been to apply for review of the grant, I do not think it would be fair to drive the applicants from the seat of justice especially where they were not represented.

14. Article 159 (2) (d) of the Constitution makes it clear that when called upon to administer Justice, the courts or any other tribunals which exercise judicial authority, shall not be blindly enslaved by procedural technicalities. The applicants being unrepresented by counsel filed an application for amendment instead of one for review. If this application is dismissed, would it be said then that justice has been served to the parties? I find that justice in this instant can only be done to all the beneficiaries in this case if this application is allowed.

15. In the end, I therefore make orders that the said Certificate of Confirmation of Grant dated 7th December 1998 shall be reviewed to reflect the names of all the beneficiaries.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 14TH DAY OF FEBRUARY, 2022.

R. NYAKUNDI

JUDGE