

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 856A OF 2006

IN THE MATTER OF THE ESTATE OF JAMES KAMAU KAMARU (DECEASED)

REUBEN KAMAU KAMARU.....PETITIONER

RULING

1. The deceased James Kamau Kamaru died intestate on 5th March 2003 at St. Mary's Hospital in Nairobi. On 18th April 2006 his son Reuben Kamau Kamaru petitioned this court for the grant of letters of administration intestate. He indicated that the deceased's other beneficiaries were Teresia Wangui Kamaru (widow), Elizabeth Nyokabi Kamaru (daughter), Beatrice Wambui Kamaru (daughter) and Lucy Wanjiru Kamaru (daughter). The estate comprised LR No. Dagoretti/Kangemi/1175, LR No. Dagoretti/Kangemi/T.464, and shares at Kenya Airways, Standard Chartered Bank, T.P.S., Kenya Commercial Bank, H.F.C.K. and Kikanye Investment.

2. The grant was issued to the petitioner on 12th July 2006, and confirmed on 11th February 2008. The two parcels of land went to Teresia Wangui Kamaru and the shares were distributed to the children.

3. On 20th November 2018 the petitioner filed an application under **section 74** of the **Law of Succession Act** and **rule 40(1)** of the **Probate and Administration Rules** to rectify the certificate of confirmation so that:-

- a) in respect of Dagoretti/Kangemi/T.464, it be indicated that Teresia Wangui Kamaru should get half of it;
- b) the name of Teresia Wangui Kamaru be rectified to read Teresiah Wangui Kimani to accord with her national ID Card; and
- c) the shares at Kenya Commercial Bank, T.P.S. and HFCK should all go to the petitioner.

4. The petitioner swore a supporting affidavit to say that the deceased owned Dagoretti/Kangemi/T.464 jointly with the late James Chege Ndwaru and therefore only half of the parcel ought to have gone to the estate of the deceased (and therefore to his widow); that the deceased's widow's correct name as per her national identity card was Teresiah Wangui Kimani; and that the petitioner's siblings Beatrice Wambui Kamaru, Lucy Wanjiru Kamaru and Paul Irungu Kamaru had each died and that their children had agreed that the shares due to them be held by the petitioner in trust for them (the children). The deceased's widow swore a supporting affidavit to provide her consent. So did Elizabeth Nyokabi Kamaru. The other consents were from Loise Wanda Wanjiru and John Karanja Wambua. They indicated that they were each one of the beneficiaries by Lucy Wanjiru Kamaru and Beatrice Wambui Kamaru, respectively.

5. The application was undefended. It was heard by Justice Ali-Aroni who on 4th April 2019 declined it. She considered that there was no proof that Beatrice Wambui Kamaru, Lucy Wanjiru Kamaru and Paul Irungu Kamaru had died; there was no evidence that Loise Wanja Wanjiru was the only beneficiary of Lucy Wanjiru Kamaru or that John Karanja Wambua was the only beneficiary of Beatrice Wambui Kamaru; nothing had been said about the dependants of Paul Irungu Kamaru; and that the petitioner had not demonstrated to the court the need for him to hold the shares in trust when they could go directly to the beneficiaries in question.

6. The petitioner, in the instant application dated 23rd May 2019 is asking that the ruling of 4th April 2019 be reviewed. The application was brought under **sections 1A, 1B, 3A and 80** of the **Civil Procedure Act** and **Civil Orders 45 rule 1** and **51 rule 1** of the **Civil Procedure Rules**. He abandoned the prayer in regard to the shares. He applied that the deceased's widow gets half of Dagoretti/Kangemi/T.464 and that her name be rectified to read Teresiah Wangui Kimani as captioned in her national identity card. His case was that he is experiencing the challenge of completing the administration of the estate because Dagoretti/Kangemi/T.464 was in the certificate of confirmation all given to the widow of the deceased, when the deceased owned only half of it and the other half belonged to James Chege Ndwaru. Secondly, the widow's name ought to be rectified to read Teresiah Wangui Kimani as reflected in her national identity card. The application was consented to by the widow of the deceased.

7. I have indicated that in the ruling delivered on 4th April 2019 the judge declined the application dated 20th December 2018. Reading the ruling, the court only dealt with the application in relation to the shares that the petitioner was seeking that they vest in him. The court did not deal with the issue of the registration of Dagoretti/Kangemi/T.464 and the rectification that was sought in relation to the name of the deceased's widow. It is evident that the omission by the court to deal with the two issues was inadvertent and not intentional. It was a mistake apparent on the face of the record which should be remedied by review under **Order 45 rule 1** of the **Civil Procedure Rules**.

8. I consider that correction of a name is one of the things that can be rectified under **section 74** of the **Act**. I also consider that the deceased's estate got, as it were, more than it was entitled to in respect of Dagoretti/Kangemi T.464, now that the deceased owned parcel jointly with James Chege Ndwaru. However, in respect of this parcel the rules of natural justice would not allow a discussion of the parcel

without reference to James Chege Ndwaru, or his heirs. Order cannot be given over the parcel without him being afforded a hearing, or without him providing his consent.

9. That being the case, I allow the part of the application that reviews the name of the widow of the deceased to read Teresiah Wangui Kimani. Regarding the part of the application in relation to Dagoretti/Kangemi/T.464, I direct that the same be served on James Chege Ndwaru or, if dead, on the administrator of his estate, to be able to respond, or give consent, within 30 days. The matter shall be mentioned on **29th March 2022** for further orders.

DATED AND DELIVERED NAIROBI THIS 7TH DAY OF FEBRUARY 2022.

A.O. MUCHELULE

JUDGE