



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 29 OF 2013

IN THE MATTER OF THE ESTATE OF JOSEPHAT KARIUKI NGURE (DECEASED)

JANET BARABIU KARIUKI.....APPLICANT

VERSUS

DAVID IKONYA KARIUKI.....1ST RESPONDENT

GEORGE NGURE KARIUKI.....2ND RESPONDENT

ALICE WANJIRU NJUGUNA.....3RD RESPONDENT

RULING

1. Section 74 of the Law of Succession Act (Cap 160) provides that:-

“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.”

Rule 43(1) of the Probate and Administration Rules states that:-

“(1) 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 the 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 issued.”

2. I have reproduced these provisions because the application dated 15th January 2021 by the applicant Janet Barabiu Kariuki has stated to be brought under the same. It sought the rectification of the certificate of confirmation that was issued on 9th April 2019.

3. Some background to the application will suffice. The deceased Josphat Kariuki Ngure died intestate on 7th June 2008. He was survived by a widow (the applicant) and the following children:-

(a) George Ngure Kariuki (2nd respondent);

(b) Mary Gathoni Kariuki;

(c) Jean Wangui Kariuki;

(d) Thomas Ruhui Kariuki;

- (e) Esther Njeri Kariuki;
- (f) David Ikonya Kariuki (1st respondent);
- (g) Margaret Nduta Kariuki (deceased); and
- (h) James Kinyanjui Kariuki (deceased).

On 27th February 2013 the applicant petitioned this court for the grant of letters of administration intestate. The grant was issued on 17th December 2015, and confirmed on 9th April 2019. The deceased's estate comprised LR No. 7462 and LR No. 7463. The deceased had given the 2nd respondent 22 acres of LR No. 7462. When the portion was measured it turned out to be 18.1 acres. It was common ground that 1.1 acres was to be surrendered by the 2nd respondents for a road reserve.

4. LR No. 7463 was shared as follows:-

- a) the applicant – 2 acres;
- b) the 1st respondent, Alice Wanjiru Njuguna (3rd respondent) and Thomas Ruhui Kariuki were each to get 4.5 acres;
- c) Jean Wangui Kariuki, Esther Njeri Kariuki, Mary Gathoni Kariuki and the estate of Margaret Nduta Kariuki were to each get 2.97 acres.

Alice Wanjiru Njuguna (3rd respondent) was the widow left by the late James Kinyanjui Kariuki.

5. The respondent was dissatisfied with the way the estate was distributed. He preferred an appeal to the Court of Appeal. The appeal is pending hearing and determination.

6. The applicant's application for rectification substantially seeks the redistribution of the estate of the deceased in a number of respects. I will highlight only two areas to show the intended redistribution. One, that the late James Kinyanjui Kariuki left two houses, and not one. One house was that of the 2nd respondent and the other was that of the Late Jane Wanjiru. Each house has children. It is sought that the house of the 3rd respondent gets 2.25 acres and that of the late Jane Wanjiru gets 2.25 acres. The children of Jane Wanjiru seek to hold the portion of their mother jointly. Secondly, LR No. 7462 that went to the 2nd respondent produced, among other subdivisions, LR No. 7462/5 measuring 6.75. The applicant seeks that this portion be shared so that Jean Wangui Kariuki gets 2.512 acres and Thomas Ruhui Kariuki gets 4.240 acres.

7. Her application was supported by Jean Wangui Kariuki, Mary Gathoni Kariuki, Grace Gathoni Kariuki, Susan Mumbi Kinyanjui, Thomas Ruhui Kariuki, Jennifer Barabui Kinyanjui and Esther Njeri Kariuki. It was opposed by the respondents. They stated that they were not consulted on the proposed redistribution of the estate of the deceased, and do not support it.

8. It does not matter the reasons that the applicant has for seeking the redistribution of the estate. The truth is that an application for rectification under **section 74** and **rule 43** is limited in scope. It can only deal with the correction of an error in names of persons or places, or the description of persons, things or places. It deals with the correction of errors regarding the time or place of death and, in case of a limited grant, the purpose for which the grant was made. In the instant case, the applicant is seeking, among other things, to introduce new beneficiaries and to rework the shares of the existing beneficiaries. Some of the existing beneficiaries in the certificate of confirmation will get more and others will get less than what the court had ordered. It is now trite that such introduction of new beneficiaries and redistribution of the estate of the deceased cannot be entertained through an application for rectification (**In Re Estate of Dishon Ondiek Mayabi (Deceased) [2020] eKLR; In Re Estate of Kwaria Marete (Deceased) [2018]eKLR**).

9. In short, the application by the applicant is misconceived and is hereby dismissed with costs.

DATED AND DELIVERED NAIROBI THIS 10TH DAY OF MAY 2021.

A.O. MUCHELULE

JUDGE