



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 389 OF 2012

IN THE MATTER OF THE ESTATE OF MOIJO MATAIYA OLE KEIWUA (DECEASED)

RULING

(1) Before this Court is the Summons for Rectification of Grant dated **23rd July 2018** by which **PEGGY RESIATO KEIWUA** the Administratrix / Applicant seeks orders **THAT:-**

“1. SPENT

2. That this Honourable Court be pleased to rectify the Grant issued on 22nd July 2014 to the extent that TOMPOI OLE KEIWUA one of the beneficiaries of the Deceased estate be granted the following assets absolutely:-

a) Cismara/Ololulunga/155 measuring 927.82 acres.

b) Cismara/Nkobon/347 measuring 78.60 acres.

c) Nkobon Plot.

d) Plot at Ololunga Junction Masantare.

e) Kshs. 8.5 million being a share from the monies from the estate account made up as follows:-

i. Kshs. 5.5 million being his share.

ii. Kshs. 3 million being compensation of the costs incurred constructing his house.

f) ¼ of the livestock comprising of cattle, sheep and goats.

g) Pick up Registration KBW 146Z Toyota Hilux.

h) The Mower.

3. That costs of this application be provided for.”

(2) The Summons which was premised upon **Section 74** of the **Law of Succession Act, Cap 160, Laws of Kenya** and **Rule 43** of the **Probate and Administration Rules**, was supported by the affidavit of even date sworn by the Applicant.

(3) The Respondent **TOMPOI OLE KEIWUA** a beneficiary of the Estate opposed the Summons through the Replying Affidavit dated **23rd January 2020**. The Summons was canvassed by way of written submissions. The Applicant filed her written submissions dated **1st March 2021**, whilst the Respondent relied upon his written submissions filed on **17th February 2020**.

BACKGROUND

(4) This matter involves the estate of the late **MOIJO MATAIYA OLE KEIWUA** (hereinafter ‘**the Deceased**’) who died intestate on **9th October 2011**. The Applicant **PEGGY RESIATO KEIWUA** a widow of the Deceased was appointed as the Administratrix of his estate

and a Confirmed Grant was issued in her name, on **22nd July 2014**. The Respondent **TOMPOI OLE KEIWUA** is one of the beneficiaries of the estate of the Deceased.

(5) By this Summons the Administrator / Applicant seeks to have the Confirmed Grant rectified so as to vest $\frac{1}{4}$ **share** of the estate in the Respondent.

(6) The Respondent in opposing the Summons for Rectification of Grant submits that the Applicant as Administratrix was appointed to hold the net estate in trust on behalf of the **three (3)** children (beneficiaries) of the Deceased. The Respondent avers that upon termination of the life interest held by the Administratrix, he would be entitled to **one – third ($\frac{1}{3}$)** of the estate and not **one – quarter ($\frac{1}{4}$)** as proposed by the Administratrix. For this reason the Respondent opposes any attempt by the Administratrix to distribute the estate at this stage.

ANALYSIS AND DETERMINATION

(7) I have carefully considered this Summons for Rectification of Grant, the Affidavit in Support as well as the Replying Affidavit filed in response thereto. I have also considered the written submissions filed by both parties. **Section 74** of the **Law of Succession Act** provides for the circumstances under which a Grant may be altered and/or revoked. **Section 74** provides:-

“Errors in names sand 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.”

(8) The procedure to be followed in Rectifying a Grant is provided for by **Rule 43** of the **Probate and Administration Rules**. **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 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 ...”

(9) A clear reading of the above provisions of law reveal that the circumstances under which a Grant may be rectified are limited. Rectification of Grant is restricted to only the following three (3) scenarios:-

“a) errors in names and descriptions of persons or things;

b) errors as to time or place of death of the Deceased;

c) in cases of a Limited Grant, the purpose for which such limited is made.”

(10) The Applicant herein has approached the Court seeking to have the Grant issued to herself rectified in order to transfer certain properties belonging to the estate to the Respondent. In other words the Applicant is seeking to **distribute** certain assets of the estate to the Respondent.

(11) **Section 74** provides for Rectification **ONLY** in cases of errors in names of persons or descriptions of property or in cases of error as to the time or place of death of the Deceased. There is **no** provision for rectification so as to enable an Administrator distribute the estate.

(12) The Applicant avers that she has made this application because one of the beneficiaries **desires** to have his share of the estate transferred to him. Interestingly the Respondent who is said to be desirous of having his share of the Estate distributed to him immediately opposes the application. The Applicant further averred that all the beneficiaries attended a family meeting, at which they all agreed that the Grant be rectified in the manner sought. That the Respondent and his lawyer were also present at the said meeting. The Applicant states that the Respondent consented to receive the properties listed in **Clause (a) to (b)** of this Summons in **”full and final Settlement”** of his share of the estate.

(13) The Applicant annexed to her Supporting Affidavit the minutes of the said family meeting (Annexure ‘A’) whose Agenda was indicated to be **“Distribution of Tompoi’s share.”** I note that the minutes of the said meeting appear to have been signed by the Respondent. However the consent to mode of distribution (Annexure **PK’1’**) is **not** signed by the Respondent.

(14) It is therefore evident that the Respondent did not consent to the mode of distribution of the estate proposed by the Applicant. Given that the beneficiary for whose benefit this application is being made namely **Tompoi Ole Keiwua** has strenuously opposed the Summons, that beneficiary (Respondent herein) cannot be compelled to accept the properties which are now being assigned to him.

(15) In the Certificate of Confirmation of Grant dated **18th February 2015** **ALL** properties and assets of the Deceased devolved to his widow **Peggy Resiato Keiwua** absolutely. As such the Applicant held a life interest in said property and assets. As a general rule there should be no distribution of the estate during life interest. In the case of **ELIZABETH WANJIRU NJONJO RUBIA –VS- BRIAN MWAITURIA [2019]eKLR** the Court of Appeal held as follows:-

“... Ideally, an estate ought not to be distributed during life interest. Life interest and minority are on the same face of the coin, they result in a continuing trust which ends with the termination of life interest or minority. This would mean that the surviving spouses and minor children occupy a special place in the succession arrangement. They are vulnerable and need

protection, and therefore they deserve special attention during distribution.” [own emphasis]

(16) Based on the foregoing I find that this Summons for Rectification **does not** fall within the parameters set by **Section 74** for Rectification of a Grant. Consequently the Summons fails. Finally I dismiss the Summons for Rectification of Grant dated **23rd July 2018** in its entirety. This being a family matter I make no orders on costs.

DATED IN NAIROBI THIS 18TH DAY OF JUNE, 2021.

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MAUREEN A. ODERO

JUDGE