



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 856 OF 2011

IN THE MATTER OF THE ESTATE OF RONALD KIBE KINYANJUI (DECEASED)

RULING

Naomi Wanjiku Kimani and Olive Kirigo Kibe filed this Summons seeking to have the Grant to them on 20th September, 2011 and confirmed on 29th November 2011 rectified. They seek the following prayers:

1. That the properties held in trust by the 1st Administratrix Naomi Wanjiku Kimani for the children named, Olive Kirigo Kibe, Lynn Wangari Kibe and Elly Kinyanjui Kibe aka Kinyanjui Kibe, be registered in the names of the 1st Administratrix Naomi Wanjiku Kimani absolutely save for the Business name Pressevet Printers and Stationers.
2. That Business name Pressevet Printers and Stationers be registered in the name of Elly Kinyanjui Kibe aka Kinyanjui Kibe

The applicants have supported this Summons with the grounds that the 1st Administratrix is the widow of the deceased whose estate these proceedings relate and the mother of the three children; that the three children have now attained the age of majority and are in agreement with the changes sought.

In the Affidavit in support of the Summons, the Applicants refer to the Certificate of Confirmation of the Grant as containing an error now sought to be rectified, the error being that the assets forming the estate of the deceased were distributed to her to hold in trust for the children.

During the hearing of this Summons, Ms Jean Kiarie made brief submissions that the children are now grown up and wish to have the properties registered in the name of their mother absolutely save for the Business name.

Rectification of grants is provided for under **Section 74 of the Law of Succession Act**. It states as follows:

Errors in names and descriptions, or in setting fourth 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.

I have considered the Summons before me. The Grant of Letters of Administration Intestate in respect of this estate was issued to the Petitions on 20th September 2011. It was confirmed three months later on 29th November 2011 and a Certificate to that effect was issued. In the Certificate of Confirmation the following properties are listed to be held by Naomi Wanjiku Kimani in trust for Olive Kirigo Kibe, Lynn Wangari Kibe and Elly Kinyanjui Kibe:

- (i) Juja Kalimoni Block 3/411
- (ii) Nairobi Block 110/883
- (iii) Kilifi/Roka/1246
- (iv) Nairobi Block 118/1018
- (v) Thika Loc. 16/Gatura/1101
- (vi) Thika Loc. 16/Gatura/1099
- (vii) KJD/Kitengela/17064

(viii) KDJ/Kitengela/17063

(ix) KJD/Kitengela/17050

There is no evidence placed before me to show that registration of these properties changed from the name of the deceased to that of Naomi Wanjiku Kibe in trust for the three beneficiaries or that distribution of the estate took place. If this change has not taken place, then the estate is compact as no distribution has taken place.

From my understanding of this application it is obvious to me that the Applicants are seeking to have the trust created in favour of the three beneficiaries at the time the grant was confirmed terminated in favour of Naomi Wanjiku Kibe. The problem with this matter is that the applicants have come to court the wrong way. They have come citing errors capable of being rectified by dint of Section 74 of the Law of Succession Act. As far as I can determine, there is no error in confirming the Grant and issuing a Certificate of Confirmation indicating the shares of the estate to specific beneficiaries so that part of the estate as listed above is held by Naomi in trust for the three beneficiaries. Besides, Section 74 of the Law of Succession Act is clear on what can be rectified under that section as follows:

- (i) Errors in names; or
- (ii) Errors in descriptions, or
- (iii) Errors in setting forth the time and place of deceased's death, or
- (iv) Errors on the purpose in a limited grant

These are not the errors the Applicants seek to rectify. They seek to alter the distribution of the estate. A similar issue arose before this court (Musyoka, J) in **In the Matter of the Estate of Joseph Muthama Ngare (Deceased) [2013] eKLR**. The Applicant in that matter sought to terminate the trust and approached the court under Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules. The Judge stated as follows:

“The applicants’ case is that they want the trust created on 10th March 2003 terminated. This termination would then require that the certificate of confirmed grant be altered to accommodate the termination. Would this call for a rectification of the grant under Section 74 and Rule 43? Quite obviously not. The circumstances in this case do not amount to errors. The situation cannot be handled through Section 74 and Rule 43. The circumstances of this case are not what is envisaged by Section 74 and Rule 43. The certificate of confirmed grant dated 10th March 2003 cannot be amended in the manner proposed to the application.”

I agree with the reasoning of the Judge in the above quoted matter. The administratrix and the beneficiaries are entitled to terminate the trust if that is what they desire. However they must approach the court in a proper way. What they seek cannot be achieved by rectification of the grant. Section 74 is not available to them. They need to use a different approach. They do not lack in legal counsel. Let them come to court in the proper way so that the orders they seek to terminate the trust can issue. I need to add that this is not a procedural technicality that can be cured under Article 159 of the Constitution. It is my considered view that the prayers sought in this Summons cannot issue. Consequently, the Summons for rectification dated 15th February 2021 is declined. Costs will be in the cause. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED ON 19TH JULY 2021.

S. N. MUTUKU

JUDGE