



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

P & A NO.12A OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE LEO ODUOR RAJULA – (DECEASED)

GEOFREY ODUOR WANJIRU.....PETITIONER

VERSUS

ROSEMARY AKINYI WANJIRU.....1ST ADMINISTRATOR/PROTESTOR

AND

1. MAGARITA ONYWERA ODUOR

2. CONSOLATA AKETCH ODUOR.....ADMINISTRATORS

R U L I N G

[1] An amended grant of letters of administration respecting the estate of the late Leo Oduor Rajula (**deceased**) was issued on 23rd May 2016, in favour of Magarita Onywera Oduor, Consolata Aketch Oduor and Rosemary Akinyi Wanjiru. Initially the grant was issued on 9th May 2012, in favour of Geoffrey Oduor Wanjiru (**sic**) and was confirmed on 8th July 2014 only to be revoked by a consent entered between the parties on 23rd May 2016 following an application for revocation of grant filed by Magarita Onywera Oduor, Consolata Oduor and Rosemary Akinyi Wanjiru (**the current administrator**). It was then that the amendment grant dated 23rd May 2016, was issued. Thereafter, on 18th October 2016, two of the administrators i.e. Magarita Onywera Oduor and Consolata Aketch Oduor, applied for confirmation of the grant but the third administrator, Rosemary Akinyi Wanjiru protested vide an affidavit of protest dated 7th February 2017 on the basic ground that the beneficiaries named Geoffrey Oduor, David Oduor, Patrick Oduor and Evans Oduor were not entitled to a share of the estate property being LR No.Marachi/Elukhari/1338 as they were not sons of the deceased but one Alfred Wanjiru Rajula.

[2] The protest was heard by the court and overruled on 3rd June 2020, with the result that the administrators were given a period of six months to distribute the estate and render accounts. However, on 19th June 2020, the third administrator Rosemary Akinyi Wanjiru (**sic**) filed a Notice of Motion seeking a review of the court order made on 3rd June 2020. However, the application was withdrawn in court on 8th March 2021 and on the 24th March 2021 the amended grant was confirmed to the extent that the estate property was distributed to all the named beneficiaries in equal share.

[3] However, on the 29th April 2021, the third administrator, Rosemary, filed a chamber summons under **Rule 73** of the **Probate & Administration Rules** for rectification of the certificate of confirmation of grant issued on 24th March 2021. The application was seemingly abandoned and a fresh application dated 30th July 2021, was filed on 4th August 2021.

This is the application subject of this ruling and is opposed by the first and second administrators, Magarita Onywera and Consolata Aketch.

Most interesting, the application is brought under a strange and non-existent procedural law styled “summons for review of certificate of confirmation of grant” purportedly under **Rules 59 (5), 63 and 73** of the Probate and Administration Rules seeking orders which would invariably upset or substantially alter the confirmed mode of distribution of the estate to exclude some of the beneficiaries and change the manner of sharing the estate property.

[4] It is not therefore certain whether the applicant seeks a review of the mode of distribution which has already been approved by the court or she seeks a rectification of the certificate of confirmation of grant.

Review and Rectification are two different and distinct words with different meanings. In plain English, review means to re-look or re-examine while to rectify simply means to correct or make right. If the applicant intended a review of the certificate of confirmation of grant that she ought to have invoked **Order 45** of the **Civil Procedure Rules** which is among those provisions of the Civil Procedure Rules that are imported into proceedings under the Law of Succession Act and/or the Probate and Administration Rules by dint of **Rule 63** of the Probate and Administration Rules. And if the applicant intended a rectification of the certificate of confirmation of grant then she should have brought the application by way of summons for rectification of grant under **Rule 43** of the **Probate and Administration Rules** or **s.74** of the **Law of Succession Act**, which provides for rectification of errors, in names and description but not alteration of the confirmed mode of distribution as intended in this application. In that regard, the proper procedure would have been to apply for the revocation of the impugned certificate of confirmation and issuance of a fresh certificate after consensus is reached by the administrators, and all rightful beneficiaries of the estate, failure to which, the parties would surrender to the court to distribute the property in accordance with the law.

[5] The present application is therefore improper and incompetent before this court. It is therefore dismissed for being fatally defective without prejudice to the applicant filing or taking out necessary summons for the revocation of the certificate of confirmation of grant under **s.76** of the **Law of Succession Act** or even for revocation of the amended grant issued on 23rd May 2016.

The parties shall bear their own costs of the application.

Ordered accordingly.

J.R. KARANJAH

J U D G E

[Read & signed this 4TH day of **NOVEMBER 2021**]