



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3848 OF 2004

IN THE MATTER OF THE ESTATE OF WARONJA GACHUNGA (DECEASED)

MONICAH WAMBUI WARONJA.....APPLICANT

VERSUS

RAHAB WAMBUI WARONJA.....RESPONDENT

RULING

1. An application seeking rectification of a grant or certificate of confirmation is very limited in its scope. Under **section 74** of the **Law of Succession Act (Cap 160)**, errors on grants of representation may be rectified by the court. It provides that: -

“Errors in names and descriptions, or in setting forth 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.”

2. **Rule 43(1)** of the **Probate and Administration Rules** provides 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.”

3. The court in **In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [2013]eKLR** observed that the power to order rectification under **section 74** of the **Act** and **rule 43(1)** of the **Rules** is limited to correction of errors relating to names or descriptions or setting out of the time or place of the deceased’s death. It is clear that the provisions do not give a general power to substantially interfere with the grant of letters of administration or the certificate of confirmation. Where an applicant seeks to redistribute the estate of the deceased, to introduce new beneficiaries or to remove some or to introduce new property to the estate of the deceased or to remove some of the properties, the request would be beyond the provisions of **section 74** of the **Act** and **rule 43(1)** of the **Rules (In Re Estate of Charles Kibe Karanja (Deceased)[2015]eKLR)**.

4. The deceased Waronja Gachunga died intestate on 15th March 2002. His first wife was Rahab Wambui Waronja (the respondent) and second wife was Monicah Wambui Waronja (the applicant). They had in total 14 children. The applicant and the deceased’s brother petitioned for the grant of letters of administration intestate. The grant was issued on 24th May 2005 and confirmed on 7th December 2005. The respondent successfully applied for the revocation of the grant. A fresh grant was on 25th June 2008 issued in the joint names of the applicant and the respondent. The grant was confirmed on 19th October 2017.

5. The present application dated 10th April 2019 was made under **section 74** of the **Act** and **rule 73** of the **Rules** to rectify the certificate of confirmation issued on 19th October 2017 and for the court to order fresh distribution of the estate of the deceased. There was also request for inhibition over parcel number Kijabe/Kijabe Block 1/185. The gist of the application by the applicant was that before the grant and certificate of confirmation issued to her were revoked, she had sold Kijabe/Kijabe Block 1/1851 to third parties who had taken possession. Yet the new grant and certificate of confirmation had given the parcel to the respondent’s house. She sought fresh distribution that would

remove this parcel from the respondent's house and give it to the third parties. The applicant alleged that the respondent had moved to the court and obtained the revocation of the grant without reference to her. This bit of her averment is not true as the record shows that she participated in the application to revoke the grant and certificate of confirmation. The respondent swore that, in her understanding, the certificate of confirmation having been revoked, all acts that had been done pursuant to it were null and void.

6. As shown in the foregoing, **section 74** of the **Act** does not give the power and jurisdiction to interfere with the grant and certificate of confirmation in the manner sought in the application. The court cannot under the provision redistribute the estate, or remove a parcel of land from the respondent and give it to third parties. What the application seeks is beyond the power to rectify the grant under **section 74** of the **Act**.

7. The applicant further relied on **rule 73** of the **Rules** which provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

However, a rule cannot be interpreted to give power that a **section** of the **Act** does not allow. It would be an abuse of the court's power to go against the clear provision of the **Act**.

8. In conclusion, the application is not only incompetent but also lacks merits. It is dismissed with costs.

DATED and DELIVERED at NAIROBI this 2ND DECEMBER 2020.

A.O. MUCHELULE

JUDGE