



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO.407 OF 2013

IN THE MATTER OF ESTATE OF WILSON KIGOTHO KABU (DECEASED)

PETERSON MURIUKI KIGOTHO.....PETITIONER/APPLICANT

R U L I N G

The application before me is the Summons for Rectification of grant brought under s.49 and 63 of the P&A Rules.

It seeks the orders: -

- 1. That the certificate of grant dated 19th February 2016 be rectified to replace Mercy Nyaguthii Kigotho now deceased with Shelmith Wangu Nyaguthii.**
- 2. That costs be in the cause.**

The grounds for the application are to be found in the supporting affidavit of Peterson Muriuki Kigotho- the petitioner/applicant and on the face of the Summons that: -

- i) Mercy Nyaguthii Kigotho passed on before the grant was implemented.
- ii) The said Mercy Nyaguthii Kigotho is survived by Shelmith Wangu Kigotho who is her only child.

In his affidavit sworn on 1st April 2019 the petitioner deposes that the letters of administration were issued and confirmed to him on 19th February 2016. That Mercy died on 2nd April 2016 as evidenced by the annexed certificate of death – that the deceased had only one child as evidenced by her National ID card and hence that he wanted to distribute her estate to her child.

Rule 49 of the P&A rule provides for “Applications not otherwise provided for” so that any person “*desiring to make an application to the court on a matter relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file summons supported if necessary by affidavit*”.

Summons for Rectification of Grant are clearly provided for under s.74 of the Law of Succession Act and Rule 43 of the P&A Rules – to correct errors i.e. “*in the names/description of any person or thing or as to the time and place of the death of the deceased*”. There is no room in the rectification of a grant for the substitution of a deceased beneficiary with that beneficiary’s heir.

It has been held by this court in numerous authorities that the substitution of a beneficiary, the addition of a new beneficiary, the addition of an otherwise newly discovered assets are not issued to be dealt with under s.74 or rule 43 of the Laws of Succession Act.

When a person dies intestate, his/her estate becomes subject of succession proceedings.

The court is being asked in this application to conduct a succession within a succession through the rectification of grant. While the circumstances of the case may dictate the kind of orders to be issued, I hold the view that the petitioner must demonstrate that the person he wants to substitute is the sole heir of the estate as the same may become the subject of the succession cause with regard to the deceased’s estate.

The averments of the petitioner are evidence that the deceased had only one child but not the only beneficiary. Is that sufficient?

The law on succession speaks for itself- upon the death of any person his/her estate becomes subject to succession and the proper procedures require to be followed.

The summon for Rectification of Grant is also brought under s.73 of P&A rules. I take that to mean Rule 73 which saves the inherent powers of the court to do justice/prevent the abuse of its processes.

Is this an application that can be allowed in the interests of justice?

Yes, but only if the applicant has demonstrated that the said Shelmith Wangu Kigotho is the person allowed by law to deal with the deceased's estate.

As it is now, it is not tenable as the orders sought cannot be allowed under the provisions of the law cited.

The application begs for striking.

However, in the interests of justice instead of striking out the application. I allow the applicant the opportunity to amend the application and provide the requisite documentation and seek the appropriate orders.

Orders accordingly

Dated, signed and delivered in open court this 7th day of June 2019 at Nyeri.

Mumbua T. Matheka

Judge

In the presence of: -

Court Assistant: Nancy

No appearance for counsel

No appearance for parties

Judge