



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 119 OF 2014

IN THE MATTER OF THE ESTATE OF MBUCHI IRUNGU KIROO (DCD)

BENSON MURIITHI MBUCHIAPPLICANT

RULING

1. This matter relates to the estate of the late Mbuchi Irungu Kiriro.
2. A grant of representation of the estate of the late Mbuchi Irungu Kiriro was issued to Benson Muriithi Mbuchi and confirmed on 05/07/2016 whereby the deceased's estate was shared out as hereunder;

- **Benson Muriithi Mbuchi Inoi/Kiaga/1174 whole share**
- **Duncan Wanjohi Mbuchi Inoi/Kiaga/1176 whole share**

3. The petitioner has now filed an application dated 02/05/2018 seeking to rectify the grant to by including assets of the deceased that had been left out. The dependants have signed consent on the mode of distribution of these assets.

Rectification of grant

Section 74 of the Law of Succession Act provides:

Errors in names and 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.

Rule 43(1) of the Probate and Administration Rules provides:

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.

4. Rectification of a grant of Letters of Administration is therefore limited to matters set out under **Section 74 of the Law of Succession Act**. It is therefore true to state that rectification of grant deals specifically with correction of error which the court may order without changing the substance of the grant. This includes errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is envisaged under the Section is a mistake which may occur on the face of the grant like typing errors in names of persons or the things. A rectification which seeks to include properties which were not in the schedule of the assets when filing the cause and not included in the grant may not fit in the matters provided under **Section 74 of the Act**.

5. The issue of rectification of grant has been addressed in various decisions of the High court. I will consider a few of them.

Refer to **In the matter of the estate of Hasalon Mwangi Kahero [2013] eKLR**

The court stated;

An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error? It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word "error" too far to say that that would amount to the error or mistake envisaged in

Section 74 and Rule 43.

Refer to **In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR**

The court stated;

The law on rectification or alteration of grants is Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules..... What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.....

Where a proposed amendment of a grant cannot be dealt with under the provisions of section 74 of the Law of Succession Act, the applicant ought to approach the court under order 44 of the Civil Procedure Rules. A review under order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this provision – order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.

Refer to **John Mundia Njoroge & 9 others v Cecilia Muthoni Njoroge & another [2016] eKLR**

The Court held;

...the only provisions of the Civil Procedure Rules imported to the Law of Succession Act are Orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time.

Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by rule 63 of the Probate and Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the Civil Procedure Rules.

6. There is concurrence in these decisions that rectification of grant deals with correction of errors and/or mistakes in names and description. A party seeking rectification to bring in assets not originally included in the grant cannot be said to be seeking rectification. An application for review listing the assets and proving their discovery and that they could not be included in the grant despite the exercise of due diligence would be appropriate and would give the court opportunity to consider whether to review the grant or not.

7. Under **Order 45 of the Civil Procedure Rules**, review can only be allowed under the following circumstances:

- 1. Discovery of new and important matter of evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the Order made.**
- 2. Mistake or error apparent on the face of the record.**
- 3. Any other sufficient reason which may make the court to review its order.**

8. In this case, the petitioner seeks to include assets of the deceased which had been left out. However, this cannot be termed as an error but it is a discovery of new evidence which was not within his knowledge. Therefore the petitioner should have applied for review of the certificate of confirmation of grant and not rectification. I find that the application as drawn is not properly before the court and cannot be allowed. I dismiss the application.

Dated at Kerugoya this 13th day of November 2019.

L. W. GITARI

JUDGE