



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 857 OF 2013

IN THE MATTER OF THE ESTATE OF JULIA NYAWIRA MWARIRI (DECEASED)

AND

LUCY WANJIKU MWARIRI.....APPLICANT

VERSUS

ALFRED MICHAEL MURIMI.....RESPONDENT

RULING

1. The applicant **Lucy Wanjiku Mwariri** through the application dated 7th August, 2013, had petitioned for limited letters of administration of the estate of **Julia Nyawira Mwariri** (her deceased mother) to be issued to the respondent **Alfred Michael Murimi** (her brother). This is for the reason that she had applied for revocation of grant of her father's estate which had been issued to her mother Julia Nyawira Mwariri under Misc. Application No. 37 of 2013. However, before the application could be heard, her mother passed away therefore she is praying that her brother the respondent be issued with the limited grant to enable her proceed with the suit.

2. However, the Limited Grant *ad Litem* of the estate of Julia Nyawira Mwariri (deceased) was issued to Lucy Wanjiku Mwariri on 20th September, 2013. Therefore she wrote a letter dated 26th March, 2014 seeking for the anomaly in the grant to be corrected since she cannot be both the applicant and the administrator under Miscellaneous Application No. 37 of 2013. In essence she is seeking rectification of the grant.

3. 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. This application was heard *ex parte*. Mr. Muchira, counsel for the applicant submitted that under Schedule 5 of the Law of Succession Act, an applicant is allowed to nominate a survivor to take out a Limited Grant. **Schedule 5 rule 14 Law of Succession Act** provides:

“When it is necessary that the representative of a deceased person be made a party to a pending suit and the executor or the person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased therein or in any other cause or suit which may be commenced in the same or in any other Court between the parties or any other parties touching the matters at issue in the cause or suit and until a final decree shall be made therein and carried into complete execution.”

5. The application by the applicant was therefore properly before Court but there was a mistake as the grant was issued to the applicant instead of the nominee. The application in Miscellaneous application number 37 of 2013 is still pending and the applicant cannot proceed as an applicant and a respondent at the same time. Where mistakes and errors occur the Court has discretion to rectify the grant to correct errors, in names, description of the place and time of death.

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.”

6. My view is that an error occurred as the applicant had clearly indicated that the grant be issued to her brother the respondent but it was instead issued to her. This is an error which can be corrected through rectification. I find that the application has merits. I order that the limited grant *ad litem* issued on 20th September, 2013 be rectified to read that it issued to the Respondent Alfred Michael Murimi.

Dated and delivered at Kerugoya this 1st day of March 2018.

L. W. GITARI

JUDGE

Read out in open Court, Mr. Rurige for Applicant, Respondent absent, court assistant Naomi Murage.

L. W. GITARI

JUDGE

1.3.2018