



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 384 OF 2013**

**IN THE MATTER OF THE ESTATE OF AMINA ROBLE WARFA (DECEASED)**

**RULING**

1. The deceased herein died testate on 26<sup>th</sup> February 2010 leaving behind a written Will dated 29<sup>th</sup> December 2008 wherein she appointed her granddaughter Nasra Issa Ali as the executrix and bequeathed to her 44 feet by 44feet and her son Hassan Ali Ossoble 44 feet by 76 feet of land out of LR No. Kakamega/Block 1/634.
2. Upon her demise, the said executrix petitioned for a grant of probate with written Will on 1/3/2011 and subsequently had the same issued on 20<sup>th</sup> September, 2015 and then confirmed on 26<sup>th</sup> February 2013.
3. However, before completion of the administration of the estate, Hassan Ali Ossoble (beneficiary) died leaving no heir to inherit his share. Consequently, the executrix moved the court vide summons for rectification of the grant of probate dated 10<sup>th</sup> January 2018 seeking to amend the certificate of confirmation of grant of probate with written Will so as to allow her assume ownership of the portion of land bequeathed to the deceased uncle Hassan Ali Ossoble who died without leaving a wife nor children.
4. Application was supported by affidavit sworn by the applicant in person and other beneficiaries who signified their consent to the extent that they had no objection in the executrix taking the entire parcel of land inclusive of Hassan Ali Ossoble's share.
5. Rectification of a grant or confirmed grant under Section 74 entails correction of 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. The application herein is not seeking any of those elements. It is ideally seeking to redistribute the estate which should be done under review after securing a separate grant on succession cause in respect of the deceased beneficiary to serve as proof of the rightful heirs of his estate. However, Article 159 of the Constitution binds us and gives guidelines that justice shall be dispensed with without regard to undue technicalities.
6. Since the beneficiary is deceased living no heir and the only heirs in order of priority of the deceased beneficiary's estate who would have been the executrix herself and her siblings who have no objection to this application, there will be no prejudice suffered if I allowed the same.
7. Accordingly, application dated 10<sup>th</sup> January, 2018 is allowed with orders that the certificate of confirmation of grant issued on 26<sup>th</sup> February, 2013 in respect of the estate herein be amended and L.R. No. Block/634 Kakamega be inherited by the applicant/executrix absolutely as the sole proprietor.

Order accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF MAY, 2018.**

**J.N. ONYIEGO (JUDGE)**

In the presence of:

No appearance for Counsel for the applicant

Edwin Court Assistant