



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 434 OF 2014**

**IN THE MATTER OF THE ESTATE OF LUCY WAMBUI NDIRANGU (DECEASED)**

**JULIUS NDIRANGU MAINA.....PETITIONER**

**AND**

**FAITH MUTHONI MBUI.....1<sup>ST</sup> RESPONDENT**

**FRANCIS KARANI GATEI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant Julius Ndirangu Maina was the administrator of the estate of **Lucy Wambui Ndirangu** (deceased) and the grant was confirmed on 10<sup>th</sup> March, 2017 whereby the deceased's estate was distributed wholly to him.
2. The applicant has now applied for the following:
  - The Court enlarges the certificate of confirmation of grant to include Membership No. [particulars withheld] to Barclays Bank share Account No. [particulars withheld] and fresh certificate be re-issued.
  - The Court orders the respondent to remove restriction on **INOI/KAITHERI/400**.
  - That the court to order the respondent herein to remove the restriction registered on land parcel No. Inoi/Kaitheri/400 and in default court to order its removal.
3. The application is based on the ground that the certificate of the confirmed grant was issued to the applicant herein on 10/3/2017 and shares in Barclays Bank of Kenya Limited were omitted erroneously. That after issuance of the said certificate of grant the applicant could not transfer Land Parcel No. Inoi/Kaitheri/400 as he discovered that there exists a restriction on the land parcel.
4. The application is supported by the affidavit of the applicant sworn on 23/6/17 where he depones that he was awarded Barclays Bank Shares under Account No. [particulars withheld] but when applying he forgot to include the Membership No. [particulars withheld].
5. That upon presenting the form R. L 19 and R. L 7 transfer by transmission forms at the Lands Registry he was informed that the transfer could not be effected as there exists a restriction registered on Land Parcel No. Inoi/Kaitheri/400. He therefore filed this application.
6. The respondents Faith Muthoni Mbuy and Francis Karani Gatei filed a replying affidavit. The respondents do not oppose the prayer for enlargement of the grant. They have opposed the prayer for removal of the restriction on Land Parcel No. Inoi/Kaitheri/400 on the ground that there is an on going case where they have applied for the revocation of grant viz Kerugoya High Court Succession Cause No. 325/2011. That the suit land should be preserved pending the hearing and determination of the application for revocation of grant.
7. I have considered the application. There are two issues which arise:
8. **(1) Enlargement of the certificate of confirmation 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.”*

I refer to the matter of estate of **Hasalon Mwangi Kahero [2013] eKLR** where 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.”*

The respondents did not oppose this prayer and since it was an omission to include the membership number the same can be granted and fresh certificate be re-issued.

**9. (2) Removal of restriction on INOI/KATHERI/400**

**INOI/KAITHERI/400** was among the deceased’s estate which whole share was distributed wholly to the applicant. However, the respondents are opposing the removing of the restriction since they had requested the Land Registrar to caution it. That the land was compromised in the estate of Comba Kunga in which there is a pending application for revocation of grant. They therefore wish the Court to preserve the land until the application for revocation of grant is heard and determined otherwise it would be rendered nugatory. The Respondents have attached the application for revocation of grant in which the suit land is among the properties belonging to the estate of Comba Kunga. It therefore in the interest of Justice that the property be preserved pending the determination of the application for revocation of grant to determine the rightful beneficiary. The prayer should pend the hearing and determination of the application for revocation of grant in the estate of Comba Kunga. There will be no prejudice to the applicant.

**In Conclusion:**

- 1) I allow prayer 1 and order that the grant be enlarged to include Membership No. [particulars withheld] Barclays Bank Shares Account No. [particulars withheld].
- 2) The prayer for removal of restriction on Land Parcel No. Inoi/Kaitheri/400 is declined.
- 3) Costs in the cause.

**Dated at Kerugoya this 19<sup>th</sup> day of July 2018.**

**L. W. GITARI**

**JUDGE**