

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 323 OF 2008

IN THE MATTER OF THE ESTATE OF ROBERT MWIKA NGANGA (DECEASED)

RULING

1. By application dated 27th February 2018 but filed on 28th February 2018 pursuant to Sections 47 and 74 of the Law of Succession and rules 43 (1) (3) and 73 of the Probate and Administration rules, the applicant/administratrix Ruth Nyokabi prayed for orders seeking to rectify the certificate of confirmation of grant issued on 7th July 2009 so as to include an asset that was erroneously left out during confirmation. The property in question being 5 acres out of L.R. No. Kijabe/Block 2/7683 is the deceased's share in the estate of his late father Nganga Mwika alias Edward Nganga Mwika in respect of Succession cause No. 2641/2005 Nairobi H.Court.

2. Application is supported by affidavit in support deponed on 27th February 2018 by Ruth Nyokabi Mwika the administratrix/applicant herein. The applicant is a widow to the deceased in this case and also the administratrix. A grant of letters of administration intestate was confirmed on 7th July 2009 and the estate distributed accordingly. The applicant's case is to the effect that while petitioning for a grant of representation in this cause, she erroneously forgot to include 5 acres share awarded to the deceased (husband) who was a beneficiary in his late father's estate i.e. Succession Cause No. 2641/2005 Nairobi High Court.

3. To buttress her case, the applicant did annex a copy of the certificate of confirmation of grant in respect of succession cause No. 2641/2005 reflecting Robert Mwika Nganga the deceased herein as a beneficiary of five acres out of L.R. No. Longonot/Kijabe Block 2/7683. She also attached a consent of all beneficiaries confirming the existence of the said asset and its inclusion as an asset in this cause.

4. I have considered the application herein, affidavit in support and the annexures thereof. There is no dispute that the deceased herein Robert Mwika Nganga was a beneficiary of 5 acres out of L.R. No. Longonot/Kijabe/Block 2/7683 in Succession Cause No. 2641/2005 wherein the deceased in that cause was his father.

5. Rectification of a grant or certificate of confirmation of grant is entrenched under Section 74 of the succession Act cap 160 and rule 43 (1) of the Probate and Administration rules which provides for correction of errors in names and description or in setting out the time and place of deceased's death, or the purpose in a limited grant. In the instant case, the asset in question was not included or listed under form P & A 5. That omission was an error for purposes of a limited grant hence curable under Section 74 of the Law of Succession Act and rule 43 (1) of the probate and administration rules. Although the asset is a subject in another succession cause in which the applicant should have moved the court for substitution of the deceased beneficiary, the same can also apply under this file.

6. Accordingly, application for inclusion of 5 acres in LR No. Longonot/Kijabe Block 2/7683 reflected in Succession Cause No. 2641/2005 be and is hereby allowed as prayed. However, the same will remain undistributed considering that the applicant did not make any proposal on the mode of distribution. To that extent, the applicant is advised to make a fresh application seeking to distribute the additional asset with the consent of all beneficiaries who will then appear in court to confirm their consent to the proposed mode of distribution.

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF JULY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

N/A.....Applicant in person

Edwin.....Court Assistant