



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2350 OF 2007**

**IN THE MATTER OF THE ESTATE OF JORAM GATIBARU MARARO (DECEASED)**

**RULING**

1. The application for determination is dated 30<sup>th</sup> June 2015. It seeks rectification of the grant confirmed on 26<sup>th</sup> February 2001. It is brought at the instance of Esther Gathoni Gatibaru and Margaret Wanjiru Gatibaru. Several affidavits have been filed in response and in support thereof. The administrators of the estate of the deceased are Mary Wairimu Gatibaru and Jacinta Muthoni Kimotho. They were appointed on 5<sup>th</sup> February 2013, following revocation of the appointment of the previous administrator, Margaret Wanjiru Gatibaru. The applicants are not administrators of the estate of the deceased, yet they seek rectification of a confirmed grant that they do not hold.

2. Confirmation and rectification of grants is provided for by sections 71 and 74 of the Law of Succession Act, Cap 160, Laws of Kenya. Under the provisions of the Act and the rules made under it, confirmation and rectification of grants can only be at the instance of the grant holder. Confirmation of grants is governed by sections 71, 72 and 73 of the Act. Sections 71(1) and 73 provide as follows -

*‘71(1) After expiration of a period of six (6) months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower distribution of any capital assets.’*

*‘73. The court shall, within one year from the date of any grant of representation, give notice to the holder of the grant to apply for confirmation thereof.’*

3. Rectification of grants is provided for under section 74 of the Act. The procedure for obtaining rectification of a grant is to be found in Rule 43(1) of the Probate and Administration Rules, which provides as follows -

*‘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 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 in Form 110 for such rectification through the registry and in the cause in which the grant was issued.’*

4. Clearly, to the extent that the applicants are not administrators of the estate of the deceased and seek rectification of the certificate of confirmation of the grant herein, the application before me is not competent, for the estate of the deceased does not vest in them, and they have no power to distribute it. The confirmation of a grant has everything to do with distribution, which can only be at the instance of the administrators.

5. I have noted that the applicants have cleverly avoided citing section 74 of the Act and Rule 43(1) of the Probate and Administration Rules. Instead they have cited other provisions, including the provision which saves the inherent powers of the court to do justice, Rule 73. Whatever the case, the applicants are asking the court to rectify the confirmed grant, and, in my view, the position does not change. The applicants are not the holders of the grant that they seek to rectify, and therefore they have no legal standing to prosecute the application in those terms.

6. Looking closely at the application it would appear to me that the applicants are inviting the court to revisit the orders made earlier when the grant was confirmed. That would still take us back to confirmation of the grant and distribution, where the relevant orders can only be sought by the administrators. Perhaps, when the previous grant was being revoked the court ought to have considered setting aside the orders that had confirmed the said grant, so as to re-open the matter for a fresh confirmation of grant and re-distribution of the estate. I would blame the administrators for failing to move the court appropriately either to have the confirmation orders reviewed or vacated.

7. I note, however, that the applicants are also praying for accounts to be rendered by the administrators. The administrators are trustees. There is a statutory duty to account within thirty (30) days of the order herein.

8. To move the matter forward, I shall vacate the orders made on 8<sup>th</sup> October 2008 confirming the grant made on 5<sup>th</sup> March 2008, and cancel the certificate of confirmation of grant of even date. The administrators appointed on 5<sup>th</sup> February 2013 shall move the court for the confirmation of their grant. The administrators shall, in the meantime, file accounts of their administration from the date of appointment to date, also within thirty (30) days. Matter to be mentioned thereafter for compliance.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF FEBRUARY, 2017.**

**W. MUSYOKA**

**JUDGE**