



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION MILIMANI LAW COURTS
SUCCESSION CAUSE 1638 OF 1998
IN THE MATTER OF THE ESTATE OF SAMUEL KAMAU KARANU

RULING

1. The Application before the Court is brought by a Summons for Rectification of Grant. It is brought under **Section 74 of the Law of Succession Act Cap 160, Laws of Kenya and Rule 43 of the Probate and Administration Rules and all other enabling provisions of the Law**. The Application is brought by Esther Wanjiku Kamau who says she is the Administratrix of the Estate of Samuel Kamau Karanu (Deceased) who passed away on 26th January 1996.

2. The Application seeks the following Orders:

(1) THAT the grant of Letters of Administration issued to the said Esther Wanjiku Kamau in this matter on 14th day of May 1999 be rectified in the following respects as provided for under Rule 43(1) of the Probate and Administration Rules, and

(2) THAT the name Esther Wanjiku Samuel Kamau as captured on the certificate of confirmation of Grant be rectified to Esther Wanjiku Kamau.

The Application is Supported by the Affidavit of Esther Wanjiku Kamau . In it she says that the Grant “contains errors” in that her “actual name is **ESTHER WANJIKU KAMAU**” AND Not Esther Wanjiku Kimani. The evidence she produces in support of that assertion is the ID Card No 5913717 issued on 11th May 2004.

3. Before the Court will exercise its jurisdiction to rectify a grant it must be satisfied that there is in fact an error in the grant. In consideration of that, how the so called error arose is also pertinent and relevant.

4. **Section 74 of the Law of Succession, Cap 160, Laws of Kenya** provides:

“74. Errors may be rectified by the Court

Errors in names and descriptions, or in setting fourth the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered or amended accordingly.”

Rule 43 of the Succession Rules provides;

“43. Express words unnecessary

No precise form of words shall be necessary to create a condition in a will, and any expression disclosing such an intention of the testator shall have that effect.”

It is unclear how that Rule applies to this situation.

5. In effect, the Application is seeks an alteration and/or amendment of the name of the Administratrix. If the name is an error, how did that error occur? The Original Petition for Letters of Administration Intestate names the Petitioner as “Esther Wanjiku Samuel Kamau”. Her ID No is recorded as 5913717. Her P O Box No is given as P O Box No 10, Village Market. The name to which the Signature is appended is set out as “ESTHER WANJIKU SAMUEL KAMAU KARANU ID NO 5913717”. The Signature is written as EWanjiku. The Affidavit of Justification also names her as “ESTHER WANJIKU SAMUEL KARANU. Possibly due to the small space on the form. That was Sworn on 30th July 1998. Likewise the Affidavit in Support of the Petition names her as “ESTHER WANJIKU SAMUEL KAMAU ID NO. 5913717” . Likewise the List of persons surviving the Deceased names the Widow as Esther Wanjiku Samuel Kamau. The Guarantee by the Personal Sureties also names her as “ESTHER WANJIKU SAMUEL KAMAU of ID No 5913717. Those documents were ALL prepared by Advocates. The Application now before the Court has been filed by different Advocates.

6. The Grant was issued on 6th October 1998. The Chamber Summons seeking Rectification dated 12th April 1999 also name her as “Esther Wanjiku Samuel Kamau as does the Affidavit in Support. The Grant was confirmed on 14th May 1999 and the Certificate signed on 24th May 1999. In the Certificate, she is named as Esther Wanjiku Samuel Kamau”. Although the name has changed from Esther Wanjiku Samuel Kamau Karanu, It is readily apparent that the surname of Karanu has been dropped. There is no explanation for that, however, the Certificate is in that format and no request for alteration or amendment or even rectification was made for over a period of almost 17 years.

7. The Application is supported by only one piece of evidence by way of explanation. That is a photocopy of an Identity Card. The Original ID card was not produced to the Court, neither is the copy certified as a true copy. It records the ID Number of Esther Wanjiku Kamau as 5913717.

8. The ID was issued in 2004. There are no copies of earlier version ID cards bearing the same number. There is no explanation as to why the name is recorded differently. Closer inspection of the purported ID card records the date of birth of the Holder as 00 00 1939. How is that date to be verified? There is no accompanying explanation, nor a copy of the Birth Certificate or any other document that could verify such an unusual date.

9. In the circumstances, the Court cannot be satisfied that there is an error on the face of the Certificate of Confirmation of Grant. By way of oral Submissions Counsel told the Court that there was an “error made by the Registry”. That is not borne out by the earlier documents filed. It was also argued that the Grant should be consistent with the ID to enable the properties to be transferred. Again, that would only be so if the ID card and the name belonged to the same person. The Court is not satisfied of that.

10. It is noted that the Application is seeking the complete replacement of one name, that is Esther Wanjiku Samuel Kamau (Karanu) with Esther Wanjiku Kamau. Although there are similarities those are two distinct names. The Application does not ask for both versions of the name to be recorded.

11. For those reasons, the Application is dismissed.

Order accordingly,

FARAH S. M. AMIN

JUDGE

DATED 7th March 2017

SIGNED AND DELIVERED AT NAIROBI THIS 13th DAY of March 2017

In the Presence of:

Clerk: Patrick

Mr Tanui for Applicant