

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2058 OF 2003

IN THE MATTER OF THE ESTATE OF GEOFFREY KAMAU KIHUYU (DECEASED)

RULING

1. The application dated 11th May 2015 seeks rectification of a certificate of confirmation of grant to address a number of anomalies alleged in the two affidavits of the applicant, Bisharo Ibrahim Galgalo. The applicant also seeks that she be appointed the sole administrator of the estate.
2. There is a reply to the application by Sophy Njeri Kihuyu, through an affidavit sworn on 22nd October 2015. She avers that the applicant was at all times party to the proceedings undertaken in the matter. She is said to have had been party to the confirmation application, and to have had signed the application for rectification of the certificate of confirmation of grant she is now unhappy about. She states that the rectification was intended to include the name of an administrator who had been left out, to include assets that had been left out, among others reasons.
3. Both the applicant and the respondent are administrators of the estate of the deceased, having been appointed as such on 27th August 2004. The respondent is the one who brought the application for confirmation of the grant. The application is dated 23rd March 2007. None of the beneficiaries signed consents to the distribution proposed in the application. The applicant herein filed an affidavit of protest sworn on 26th July 2007. The application for confirmation of grant was heard on 16th July 2013. All three administrators were in attendance and were in agreement. The grant was confirmed and a certificate to that effect duly signed bearing even date.
4. An application dated 30th August 2013 was filed at the registry on even date seeking rectification of the certificate of confirmation of grant issued on 16th July 2013. It was brought at the instance of counsel for the administrators, seeking inclusion in the certificate of the name of the third administrator that had been left out. The matter was placed before Kimaru J. on the same date, and the order was granted, and the certificate of 16th July 2013 was rectified accordingly.
5. The orders that appear to have provoked the application the subject of the instant proceedings were made on an application dated 25th November 2013. It was brought at the instance all three administrators – Stephen Ndungu Kiiya, Sophy Njeri Kihuyu and Bisharo Ibrahim Galgalo. It sought rectification of the certificate of confirmation of grant to add and delete certain items, and to correct certain things. The affidavit in support of the application was signed by all three administrators, including the applicant. That application was placed before me on 26th November 2013 and I allowed it.
6. From the record before me, the applicant was in court on 16th July 2013 when the grant was confirmed. She did not voice any objection to the orders sought being granted. The first rectification was routine, it merely added the name of one of the administrators whose name had been omitted from the certificate. The certificate would have been useless and inoperative without the name of the third administrator. The second rectification was founded on an application whose affidavit in support was supposedly signed by all the administrators, including the applicant herein.
7. I note that the instant application is meant to undo the changes made in the orders made on rectification of the certificate on the two previous occasions. As noted above, the first change was routine, while the second one had the blessing of the applicant. I note that the instant application is not supported by the other administrators. In any event, I am not satisfied that the applicant was not involved in the previous

processes, particularly the last one. I find no basis for the orders sought in the application dated 11th May 2015. I shall accordingly dismiss it with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE