



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 649 OF 2016**

**IN THE MATTER OF THE ESTATE OF WALTER NDUNGU KIMANI (DECEASED)**

**RULING**

1. The application herein dated 25/4/2017 is brought under Section 71 (1), 3(a) and (b) 4(a) (b) and (c) of the Law of Succession seeking rectification of certificate of confirmation of grant issued on 4/4/2017. Application is based on grounds on the face of it and affidavit in support deponed by the applicant herein Kenneth Wagemu Kimani, (1<sup>st</sup> Administrator) who sought court's leave to redistribute the estate afresh. According to the applicant, the original distribution was not in conformity with what they had agreed and that there was an error hence the need to rectify the certificate of confirmation of grant.

2. I have considered the application herein and affidavit in support. A look at the list of property distributed in the original certificate of confirmation of grant issued on 4/4/2017 is totally different from those listed in the purported fresh distribution. Several properties appearing in Form P & A 5 are left out and even some listed in the confirmed grant of 4/4/2017 are not included. Among the properties left are LR No. Lari/Kirenga/602, Plot No. 35 Kirenga Market, Limuru Township/154/70, LR No. 54, 55, LR 154/70, LR 154/60. No explanation was given why all these properties were not distributed yet they were listed as part of the estate.

3. Lastly, the application is seeking to rectify an error which is not envisaged under Section 71 (1) and rule 43 of the Probate and Administration rules. Redistribution of the estate does not amount to an error under the said provision. The applicant should have sought for review of the court orders under rule 43 and 63 of Probate and Administration rules based on discovery of new material facts or an error on the face of the record or mistake. For the above reasons stated, application is hereby dismissed with no order to costs.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF JULY, 2017.**

**J.N. ONYIEGO (JUDGE)**

In the presence of:

.....Counsel for the applicant