



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 1371 OF 1997**

**IN THE MATTER OF THE ESTATE OF EVANSON NGOTHI KAHARWA (DECEASED)**

**RULING**

1. The grant herein was confirmed in 2000 and there is on record a certificate of confirmation of grant dated 2<sup>nd</sup> June 2000. It was rectified on 16<sup>th</sup> February 2016 after the widow of the deceased died and was replaced by one of her sons as an administrator.

2. The new administrator has now come back to court with an application dated 16<sup>th</sup> May 2016, seeking rectification of the distribution ordered in 2000. He justifies his application on the grounds that the distribution was unequal, and he would like it revisited to make it more equitable. To his application he has attached a consent signed by himself and two of his brothers. His other brother and two sisters have not appended their signatures to the document.

3. The application appears to target the share given to one of the daughters of the deceased who is also an administrator of the estate. She got a slightly larger share than everybody else. She avers that that was the so as she had assisted the deceased in the acquisition of the property in question. She accuses the applicant of being greedy, and wonders why he did not raise the issue of equity in 2000 when the grant was confirmed during their mother's lifetime, and says that he has only made his move after the widow died and after he became an administrator of the estate.

4. The application before me is not as simple as the applicant papers to make it. The applicant is in fact seeking to have the estate redistributed, and he hopes that he can achieve that by merely rectifying the certificate of confirmation of grant. Redistribution of an estate cannot be achieved through mere rectification of the certificate of confirmation of grant. Rectification is provided for in the Law of Succession Act, Cap 160, Laws of Kenya, to correct mistakes or errors in names and descriptions. The applicant is not seeking to correct any errors; therefore the device of rectification is not suitable.

5. The applicant seeks redistribution of the estate. Distribution of an estate is achieved through confirmation of the grant on an application made under section 71 of the Act. It is the court which distributes or sanctions distribution. The certificate of confirmation of grant is a document that is generated from the orders made by the court upon confirmation of the grant. The purport of the court's orders of distribution upon confirmation cannot be tinkered with without a court order. That can only be done through review of the confirmation orders or appeal, should the applicant be unhappy with how the court distributed the estate.

6. If the applicant is seriously minded about having the estate redistributed, then he ought to move the court appropriately for review of the orders that the court made on 2<sup>nd</sup> June 2000 when it confirmed the grant and approved the proposal on distribution that was placed before it. The alternative should be to obtain leave so that he can appeal those orders out of time.

7. I do not find any merit in the application dated 16<sup>th</sup> May 2016. I shall accordingly dismiss it, as I hereby do, with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 14<sup>TH</sup> DAY OF JULY, 2017.**

**W. MUSYOKA**

**JUDGE**