

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 2664 of 2001

IN THE MATTER OF THE ESTATE OF EVANSON

MUREITHI KIBOI-(DECEASED)

RULING

The application dated 22nd November 2012 is for the rectification of the grant made to Amos Njau Mureithi and Rachael Wanjiku Mureithi on 28th December 2001. The said grant was confirmed on 5th November 2002.

The provisions of the law under which the application is premised are not indicated, but it is alleged that two properties were omitted during the confirmation process and therefore they are not listed in the certificate of confirmed grant issued on 8th March 2011. The two properties are **Plot 2 Lower Kabete Market** and **Nairobi/Block 141/789**. It is proposed that these two properties be included among the assets of the deceased, be distributed to Amos Njau Mureithi and thereafter the certificate of grant be rectified accordingly.

Rectification of a grant of representation is allowed in **Section 74** of the Law of Succession Act. The court is empowered to order rectification of grant where there are errors in names and descriptions, or in setting out the time and place of the deceased's death. The error alleged in this application is that the two assets were omitted at confirmation. The omission in actual fact dates back to the time of applying for the grant. The properties were not in the list right from the start.

It is my considered opinion that omission of property at the making of the grant or at confirmation is not an error of the nature envisaged by **Section 74** of the Law of Succession Act. The provisions only caters for or covers typographical errors. Where an asset is omitted, the administrator should either seek cancellation of the certificate of confirmation so that the exercise of confirmation is repeated, or seek a fresh grant of letters limited to distribution of the omitted assets. Otherwise, the grant herein cannot be rectified in the manner proposed.

The application in this case seeks both rectification and distribution of the omitted assets. This is not tenable. **Section 74** only allows amendment of the grant in the limited sense stated in that provision. **Section 74** does not permit the court to distribute an estate when handling a rectification application.

It is also noted that one for the allegedly omitted assets is jointly owned. **Plot No. 2 Kabete Market** was allocated jointly to Amos Muriithi Kibui and Arthur Kariuki Gaturu on 25th February 1987 by the Kiambu County Council. It is not indicated in the letter of allocation whether the two co-owners held the property jointly or in equal shares. In absence of a clear statement as to the nature of the co-ownership, it is to be presumed that the property was held jointly, and the principle of jus accrescendi applies to the property. It is doubted whether the interest the deceased held in Plot No. 2 Kabete Market survived him as it ought to have merged or united with that of Arthur Kariuki Gaturu and thereby making Arthur Kariuki Gaturu the sole owner of Plot No. 2 Kabete Market; if the said Arthur Kariuki Gaturu had survived the deceased. If the said Arthur Kariuki Gaturu survived the deceased then Plot No.2 Kabete Market does not form part of the estate of the deceased. There would be no basis for rectifying the grant to include property which does not form part of the estate.

There is no merit in the application before me and I dismiss it with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 7th DAY OF MARCH, 2013.

W. M. MUSYOKA

JUDGE