

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1240 of 2012

IN THE MATTER OF THE ESTATE OF MOSES KIMANI BORO -(DECEASED)

RULING

The applicant placed two applications before the court; one dated the 10th December 2012 and the other 17th January 2013. One application seeks confirmation of the grant made in this matter on 25th October 2012, while the other seeks rectification of the same grant. The applicant would like the rectification application to be determined first followed by the confirmation of the grant.

The rectification application, it seeks the addition into the list of the assets making up the estate of four items that had been left out. It is alleged that the said assets were left out erroneously. The application is premised on **Section 74** of the Law of Succession Act and Rule 43 (1) of the Probate and Administration Rules.

Section 74 Provides:-

“Errors in names and descriptions, or in setting out 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 and amended accordingly”.

The error alleged in this case is not in the names of the persons, or descriptions of places or assets, or in setting out of time and place of the deceased's death. It relates to omission of property from the list of assets. It is not an error that **Section 74** and Rule 43 provide for. There is however power saved in Rule 73 of the Probate and Administration Rules for the court to order that the said omitted assets be inserted in the list of assets.

However, I am not ready to exercise that power yet as the applicant has not convinced or satisfied me that the alleged omitted assets belonged to the deceased. Ownership of the property of the sort alleged to have been omitted is usually supported by a document of one type or other. The applicant should have provided documentary proof that these assets belonged to the deceased to justify their being part in the list of assets.

I will not allow the application, nor dismiss it. Instead I will grant leave to the applicant to file a further or supplementary affidavit exhibiting documents to show ownership by the deceased of the said assets. The confirmation application dated 10th December 2012 is also postponed.

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

W. M. MUSYOKA

JUDGE