



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 39 of 2008

IN THE MATTER OF THE ESTATE OF BETH MUTHONI WAWERU (DECEASED)

RULING

Bernard Muigai Waweru has come to court by way of an application dated 1st November 2012, which seeks rectification of the grant made to him on 17th September 2008, and confirmed on 18th October 2010. The application seeks rectification of the grant to allow the redistribution of Lari/Magina/220.

In his affidavit sworn on 1st November 2012 in support of the application, the applicant seeks to have the grant rectified to make changes to the mode of distribution contained in the certificate of confirmation of grant dated 18th October 2010. He seeks termination of the trust purportedly created by the certificate over Lari/Magina/220, so that the property can be redistributed among the beneficiaries.

The certificate of confirmed grant dated 18th October 2010 states that Lari/Magina/220 is to be shared out equally between Bernard Muigai Waweru, Peter Kamau Waweru and Stephen Nguo Waweru. The distribution proposed in this rectification application shares out the property unevenly between Joseph Waweru Njoroge, Njenga Njoroge, Stephen Kungu Kago and Nahashon Muigai Kago. According to the application for grant of letters of administration, lodged in court on 11th January 2007, the deceased, Beth Muthoni Waweru, was survived by three sons – Bernard Muigai Waweru, Peter Ndungu Waweru and Stephen Nguo Waweru.

The law governing rectification or alteration of grants is **section 74 of the Law of Succession Act**. The procedure for obtaining rectification is set out in **Rule 43 of the Probate and Administration Rules**. Errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of the deceased's death. The court can only order rectifications in the situations envisaged in **section 74**. The power of the court to order rectification is not general; it is restricted to the situations stated in that provision. **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...'

Rule 43(1) of the Probate and Administration Rules:

'Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of the death of the deceased, or in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons...'

After perusing the court record, I hold that there are no errors in the certificate of grant issued on 18th October 2010. Under that certificate the estate is to be shared out equally between all the three surviving children of the deceased, that is to say, Bernard Muigai Waweru, Peter Ndungu Waweru and Stephen Nguo Waweru. There is no error in this distribution ordered by the court as the same is in conformity with **section 38 of the Law of Succession Act**, which provides:

‘Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.’

No error has been demonstrated. It would appear that the administrator is proposing to change this position and redistribute the estate in manner which would see him distribute the property of the deceased to persons who are not entitled to it. The proposal being made in the application is not supported by the law, and it runs counter to **section 38 of the Law of Succession Act**. no explanation as been given by the applicant as to why he proposes to give the estate to persons other than those required by **section 38 of the Law of Succession Act**.

The proposal cannot be dealt with under **section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules**. The certificate of confirmation the grant of letters of administration intestate herein cannot be rectified in the manner that contravenes **section 38 of the Law of Succession Act**. This is really an application for the redistribution of the estate disguised as a rectification application.

Koome J held in *In the Matter of the Estate of Muniu Karugo (Deceased) Nairobi High Court succession cause number 2668 of 1997* that rectification only deals with obvious errors and it cannot be used to fundamentally change the character of the grant. I agree entirely with that position. The proposed changes are far reaching and will result in fundamental changes to the confirmed grant. Where an administrator desires to have such fundamental changes effected, then the best solution should be cancellation of the certificate issued upon the confirmation of the grant to pave way for a redistribution of the estate where the proposed changes can be accommodated. In any event, the circumstances of this case do not call for the cancellation of the certificate as what the administrator is proposing is contrary to **section 38 of the Law of Succession Act**.

It is my conclusion, based on what I have said above, that there is nothing to be rectified in the certificate of confirmation dated 18th October 2010. The application dated 1st November 2012 is therefore without merit and I hereby dismiss it with costs.

W MUSYOKA
JUDGE

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF APRIL, 2013.