



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1084 of 1994

IN THE MATTER OF THE ESTATE OF WARUHIU ITOTE (DECEASED)

RULING

The application dated 21st November 2012, seeks rectification of the grant made on 25th August 1994 to Wambura Waruhiu, Nduta Waruhiu and Margaret Wanjiru Waruhiu. The application seeks the following:

- 1) The appointment of a co-administrator to substitute an administrator who is dead;
- 2) The making of a new grant to Wambura Waruhiu, Margaret Wanjiru Waruhiu, Gabriel Gakui Waruhiu and Mary Jane Wamuyu Waruhiu as joint administrators;
- 3) The redistribution of the estate in the manner proposed in the application.

The law which governs 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 rectification 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...'

There are no errors in the grant issued on 25th August 1994. What has happened is that an administrator has died and has to be replaced. That is not an error. It is a change in the circumstances. The law does not envisage rectification in such circumstances. The situation caused by the death of the administrator is a circumstance that cannot be dealt with under **section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules**. These provisions are designed to deal with minor errors made by the court while making a grant or confirming it.

A grant is an order of the court taking the form of a certificate. It is issued to a particular person or

persons. It cannot be transferred to another person. If it was made to two persons and it cannot be amended to remove the name of one person in order to insert the name of another, unless the name to be replaced had been inserted by error by the court. The remedy lies in revoking the grant, if there are good grounds for doing so as set out in **section 76 of the Law of Succession Act**, and making a fresh grant in the name of the person proposed as substitute to the person whose name is being removed. Where a grant is made jointly to several persons it becomes useless and inoperative after one of the holders dies. It cannot be used so long as it bears the name of a dead person. There is provision under **section 76 of the Law of Succession Act** for the revocation of such a grant. There is also power in that provision for this court to act on its own motion.

On the confirmation of the grant, it will be noted that at the time of the application was lodged in court on 21st November 2012, the grant made on 25th August 1994 had become inoperative following the death of one of the administrators, and therefore there was no capacity for the other administrators to move the court for confirmation. Confirmation is of a grant and an inoperative grant cannot be confirmed, neither can a grant be made and confirmed the same day.

For the reasons that I have set out above, I make following orders:

- 1) That the grant made on 25th August 1994 is revoked;
- 2) That Wambura Waruhiu, Margaret Wanjiru Waruhiu, Gabriel Gakui Waruhiu and Mary Jane Wamuyu Waruhiu are hereby appointed administrators of the estate of the deceased Waruhiu Itote;
- 3) That a fresh certificate of grant of letters of administration intestate shall issue to them accordingly;
- 4) That costs shall be in the cause.

W MUSYOKA
JUDGE

DATED, SIGNED and DELIVERED at NAIROBI this 3rd DAY OF April, 2013.