



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1223 of 2007

IN THE MATTER OF THE ESTATE OF JOSEPH NJUGUNA KANYA (DECEASED)

RULING

The applicant has come to court by an application dated 8<sup>th</sup> June 2012, which seeks rectification of the grant made on 18<sup>th</sup> March 1986 and confirmed on 29<sup>th</sup> July 2008 and rectified on 31<sup>st</sup> January 2012.

In the affidavit in support of the application, the applicant avers that she has discovered that she had inadvertently omitted some assets from the confirmation process and hence they do not appear in the confirmation certificate. The property in question is **Gatwanyaga/Ngoliba Block 2/499** and **KANTAFU/LUK/651**. He now seeks that the certificate be rectified to include these assets and to have them registered in her name.

The law on rectification or alteration of grants is **Section 74 of the Law of Succession Act**. The procedure for obtaining rectification is to be found 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 to order rectification is limited to those situations. The power given by that section is not general. **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...'**

I find that there was no error in this matter. The assets that are sought to be inserted were not omitted by the court but by the applicant. Its omission was not by mistake or error by the court, but rather it was a mistake of the administrator. It is a mistake which cannot be dealt with under **Section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules**. The grant of letters of administration intestate cannot be rectified in the manner proposed to accommodate the omitted assets.

The remedy available to the administrator in this matter is to move the court for the cancellation of the certificate of confirmation of grant dated 31<sup>st</sup> January 2012, so that she can apply for confirmation of the grant made to her, in which she would distribute the property which was omitted in the certificate.

The application dated 8<sup>th</sup> June 2012 with no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 10th DAY OF May, 2013.**

**W MUSYOKA  
JUDGE**

