

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1843 of 2010

IN THE MATTER OF THE ESTATE OF RAPHAEL CHESSA OYEYO (DECEASED)

RULING

The applicant has come to court by an application dated 21st August 2012, which seeks rectification of the grant made on 11th August 2011. The basis of the application is that the surviving children of the deceased are minors. The grant was made to a single administrator, yet **Section 58** of the Law of Succession Act requires that in the event that a continuing trust arises the administration of the estate of an intestate ought to be committed to more than one administrator. The applicant administrator now prays that the grant made to her on 11th August 2011 be amended to insert the name of Bernard Ouma Auma as co-administrator.

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 rectification 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.

I find that there was no error in this matter. What has happened is that the administrator failed to comply with section 58 of the Law of Succession Act, when she applied for letters of administration. She sought letters as a sole administrator. This was not an error by the court; consequently it cannot be corrected through **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.

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 will fundamentally change the grant as it will cease to be a grant to a sole administrator and become a joint grant. Where such fundamental changes are contemplated then the grant ought to be cancelled.

It should also be stated that the grant made in this matter is a nullity as long as it issued in circumstances that were not in keeping with **section 58 of the Law of Succession Act**. **Section 58(1) (a) of the Law of Succession Act** provides that:

'Where a continuing trust arises – no grant of letters of administration in respect of an intestate estate shall be made to one person alone ...'

The law is clear. No grant is to be issued in such circumstances. No grant should have been made in this case. The grant made herein was a nullity. It is useless and inoperative. Section 76 of the Law of Succession Act provides that the same is liable to revocation. The same provision grants me power to revoke such grant on my own motion.

It should be also be mentioned that a grant is an order made by the court in the form of a certificate. A certificate issues to a particular person or group of persons. Where the certificate of grant is found to be useless or inoperative, say where the holder dies or the grant is a nullity as is the case here, the same

cannot be cured by amendment or rectification. The only available remedy in the circumstances is the revocation of the grant to pave way for the making of a fresh one.

The orders I feel constrained to make in this matter in the circumstances are:

- a) That the grant of letters of administration intestate made on 11th August 2011 to Susan Akinyi Masee is hereby revoked.
- b) That a fresh grant of letters of administration intestate in respect of the estate of Raphael Chessa Oyeyo is hereby made to the said Susan Akinyi Masee and Bernard Ouma Auma.

It is so ordered.

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

W MUSYOKA
JUDGE