



## REPUBLIC OF KENYA

### High Court at Nairobi (Nairobi Law Courts)

#### Succession Cause 1342 of 1990

#### IN THE ESTATE OF SIMON NGUGI NGANGA– (DECEASED)

### RULING

The rectification application is dated 3rd July 2012. It is premised on the facts:-

- (a) That a co-administrator has died and the surviving co-administrator ought to be confirmed as the sole administrator.
- (b) That two beneficiaries have died and that their shares ought to be redistributed among the surviving beneficiaries.
- (c) That the estate be redistributed so that the four remaining beneficiaries share the estate equally.
- (d) That the description of a property be corrected.

Only one of the matters above can be dealt with under **Section 74** of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules, and that is issue number (2). The provisions above deal with such matters correction connection of errors with respect to descriptions of persons and things. The property in question -LR 2698/2705/VI/MN (Port Reitz) has been wrongly described as LR 2698/2711 Port Reitz. The error is correctable under **Section 74** and Rule 43(1).

The other matters do not touch on errors, but on changed circumstances. The death of an administrator is not an error, neither is death of a beneficiary. Deaths of such persons often necessitate that changes be made to the mode of distribution approved by the court. Such changes cannot be effected under **Section 74** of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules as they do not relate to errors. Some of them can be dealt with under Rule 63 of the Probate and Administration Rules and Order 44 of the Civil Procedure Rules. I am referring to issues (b) and (c). The death of the beneficiaries is a new matter, the stuff that Order 44 of the Civil Procedure Rules deals with. The resulting consequence of the death is redistribution of the assets, and the confirmation order of 30th July 1992 can be reviewed to introduce such changes.

The matter of the death of a co-administrator cannot be dealt with as a rectification or review of the certificate of confirmation of grant. It is more fundamental. It touches on appointment of administrators. The grant of 27th March 1991 was made to two persons. It is expected that the two are to act jointly at all times with respect to the administration of the estate. With the death of one of them, the grant becomes useless as the surviving sole administrator cannot act on the basis of a grant which still bears the name of a dead administrator. Rectification of grant cannot deal with this as the situation has nothing to do with errors as envisaged in **Section 74** and Rule 43(1). Since the grant has become useless and inoperative, it ought to be revoked and fresh appointments of administrators be made. The surviving

administrators cannot even use the grant, as it is useless, to seek the orders that the applicant now seeks in this application.

Ideally, I should only make the orders relating to issue (d) but I exercise the powers conferred on me by Rule 73 of Probate and Administration Rules, the inherent power to do justice in the circumstances. I am moved to make the following orders:-

- (1) That the letters of administration intestate made on 27th March 1991 to Lucy Wanjiru Ngugi and Eugene Nganga Ngugi are hereby revoked by the court on its own motion under **Section 76** of the Law of Succession Act, as the said letters are now useless and inoperative following the death of Lucy Wanjiru Ngugi.
- (2) That I appoint Eugene Nganga Ngugi the sole administrator of the estate of Simon Ngugi Nganga (deceased) and a grant of letters of administration *de bonis non* shall issue to him to enable him complete administration of the estate.
- (3) That the confirmation order of 30th July 1992 is hereby reviewed to allow redistribution of the estate along the lines proposed in prayers (b) and (c) of the summons dated 3rd July 2012.
- (4) That there shall also be a review in terms of prayer (d) of the said summons.
- (5) That the certificate of confirmation of grant dated 31st July 1992 is hereby cancelled and a fresh certificate of confirmation shall issue accommodating the above changes.

Orders accordingly.

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

**W. M. MUSYOKA**

**JUDGE**