



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 97 OF 2001

IN THE ESTATE OF ELIZABETH WANGARI NGETHE – (DECEASED)

RULING

The application that I am called upon to decide is dated 15th April 2010. It seeks rectification of the certificate of confirmation of grant issued on 30th May 2007 and rectified on 10th December 2008.

The said application is for dismissal and I hereby dismiss it with costs.

In the first place, a rectification application can only be moved by the administrators of the estate. Rule 43(1) of the Probate and Administration Rules, which governs the process, is very clear on this. It states:

*“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 of 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 in Form 110 for such rectification through the registry and in the cause in which the grant was issued”.*

The applicant in this cause is one Rose Wanjiru Njenga. She describes herself as the administratrix of the estate. I have carefully gone through the record. I have not seen any order making her the administratrix of the estate. Initially the grant was made on 6th April 2001 to Njenga Ngethe and Leah Wanjiru Kamuyu. That grant of 6th April 2001 was revoked on 21st November 2006 by B.P. Kubo J and a fresh grant made to Mary Wairimu Ndungu. There is nothing on record to show that the grant made to Mary Wairimu Ndungu on 21st November 2006 has since been revoked and another made to Rose Wanjiru Njenga.

Going by Rule 43(1) of the Probate and Administration Rules, Rose Wanjiru Njenga is not competent to bring an application for rectification of a grant or a certificate thereof. It is not a grant made to her and she has no standing at all to ask that the grant or a certificate issued under it be rectified or amended. The proper person to move an application for rectification of the grant or certificate of confirmation is Mary Wairimu Ndungu, the holder thereof.

Secondly, the said application seeks to reorganize the distribution ordered on 16th September 2002 and 10th December 2005. The applicant does not point to any errors or mistakes on the face of certificate of grant sought to be rectified.

Rectification is sought and granted for errors on the face of the record. The language of **Section 74** of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules is quite clear on this. Since no such errors have been pointed out, there is no basis upon which I can order rectification in the manner proposed.

The applicant perhaps intended to seek review of the confirmation orders. That is permissible under Order 45 of the Civil Procedure Rules. The review provisions of the Civil Procedure Rules have been imported into probate practice by Rule 63 of the Probate and Administration Rules. Whereas Rule 43 provides for

correction of errors on the face of the record, Order 45 of the Civil Procedure Rules, when cited in probate proceedings, ought to address new evidence which would not be available at the relevant time and any other sufficient reason.

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

**W.M. Musyoka**

**JUDGE**