



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 45 OF 2002

IN THE MATTER OF THE ESTATE OF JOSEPH MULIRO MASOLO

LENA MULIRO PETITIONER/RESPONDENT

VERSUS

SIAN MULIRO OBJECTOR/APPLICANT

R U L I N G

On 15th July, 2014, **Sian Muliro** the applicant, brought up this application for rectification of Grant of the Estate of **Joseph Muliro Masolo**. The said Grant was confirmed on **9th December, 2010** to one **Lena Muliro**. The applicant herein is the wife of **George Wasilwa Muliro**, now deceased, who was a beneficiary in the said confirmed Grant. The Grant vividly shows that the following properties were to be transferred and registered in the name of George Wasilwa Muliro:-

- (i) Kitale Milimani Plot No. 2116/XV111/44**
- (ii) East Bukusu North Sang'alo Plot No. 719 – Mabanga**
- (iii) Motor Vehicle No. KLS Mercedes Benz and**
- (iv) Motor Vehicle No. KAC 187**

Another property described as **Brookside Grevillea Grove, Grevillea Villa No. 8 LR. No. 7158/36/8** was to be registered into the joint names of **George Wasilwa Muliro** and **Joel Wafula Muliro**.

Though its not clear from the supporting affidavit of Sian Muliro as to when her husband George Wasilwa Muliro passed on, it would appear he passed on after the Grant was confirmed, and before distribution of the assets. The application implies the assets are not yet distributed.

Sian Muliro lives in the United Kingdom with three children namely:-

- (1) Rhiannon Rebecca Muyoka Muliro who was born on 21st October, 1991.**

(2) Masolo Rhys William Muliro born on 24th August, 1994 and

(3) Manyonge David Biketi Muliro born on 6th January, 1997.

These children are said to be entitled to what their now deceased father is entitled to, in the Estate of Joseph Muliro Masolo. Its on this premise that Sian Masolo seeks rectification of the Grant of the said Estate, to help the children share out in a proposed manner, what their deceased father was entitled to.

The respondent raised a preliminary objection to it on points of law under Section 26, 29, 30, 71 and 74 of the Law of Succession Act. It was argued that the applicant lacks locus standi to bring up the application. She is not herself a beneficiary to the Estate of the late Joseph Muliro Masolo, but a daughter-in-law to him. Her stated children are over 18 years and she has no capacity to make a claim on their behalf. If the said children are dependants to the Estate of the of the said Joseph Muliro Matolo, a dependency application should have been made before Confirmation of Grant, in accordance to Section 30 of the Laws of Succession Act.

On the ground this court was urged to dismiss the application with cost to the applicant.

The applicant in response averred that Section 74 of the Law of Succession Act, when read with rule 43(1) of the Probate and Administration Rules, allows any interested party to an estate to file an application for rectification of Grant, but not revocation. The children are beneficiaries to their father's entitlement and are not therefore strangers. The said application, was argued by the applicant, can be brought even after confirmation of the Grant, under Section 74 of the Laws of Succession Act. I was therefore urged to find that the application is within the law and dismiss the preliminary objection with cost to the respondent.

I have looked into the relied on provisions of the law. Section 29 of the Law of Succession Act, Cap. 160 gives the meaning of dependants as follows:-

(a) The wife or wives, or former wife or wives and the children of the deceased whether or not maintained by the deceased immediately prior to his death,

(b) such of the deceased's parents, step-parents, grand- parents, grand-children, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

(c) where the deceased was woman, her husband if he was being maintained by her immediately prior to the date of her death.

The foregoing definition makes it clear that the applicant and her children are not dependant of the deceased Joseph Muliro Masolo. This is however not a strongly contested issue as the application is based on a different ground.

Section 30 of the said Act states:-

“No application under this part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by Section 71”.

There is no dispute that the Grant to the Estate of Joseph Muliro Masolo has been confirmed. The

application is therefore affected by the given limitation of time.

Section 74 deals with rectification of 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. In this one, rectification can be done before or even after confirmation of the grant. What the applicant seek does not fall within the ambit of Section 74 of the Laws of Succession Act.

Section 76 is about revocation and annulment of grant. Here the application can be made by any interested party before or even after the grant has been confirmed. The applicant in this matter is not seeking such and her application does no fall within the ambit of this Section.

Given the foregoing considerations its clear that the applicant does not have locus standi to make the application before court for the estate of Joseph Muliro Masolo. What she wants registered in her children's names may form part of assets for the estate of her deceased husband, one George Wasilwa Muliro. The right procedure for her is to file a cause for letter of administration to that estate and include his entitlement in the estate of Joseph Muliro Masolo as part of the assets. That way the administrator to the estate of her late husband can claim his said entitlement. Her current application has the danger of sharing out part of the assets of the late George Wasilwa Muliro within the wrong petition, which is likely to shut out probably other available beneficiaries or even dependants to that estate and interested parties. As such the application cannot be allowed and must fail in law.

I accordingly find the preliminary objection merited. The application dated 21st July, 2014 is accordingly dismissed with cost to the respondent.

Ruling read and signed in the open court in presence of both parties this **29th** day of **October, 2015**.

S.M. GITHINJI

JUDGE

29/10/2015



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