



REPUBLIC OF KENYA



**In re Estate of Milikau Sawanga (Deceased) (Succession Cause
67 of 1985) [2024] KEHC 10565 (KLR) (26 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 67 OF 1985**

SC CHIRCHIR, J

AUGUST 26, 2024

IN THE MATTER OF THE ESTATE OF MILIKAU SAWANGA- (DECEASED)

BETWEEN

PETER K SAWANGA PETITIONER

AND

RICHARD MILIKAU ANYIKA OBJECTOR

RULING

1. Through the summons dated 24th April 2024, the Objector/ Applicant sought the intervention of this court for the following orders;
 1. (Spent)
 2. (spent)
 3. That the honourable court be pleased to review and or set aside the orders issued on the 4th day of March 2023;
 4. That an order of prohibition to be ordered to be registered against the parcel of land known as Butso / Ingotse / 1620 pending the hearing and final determination of this application.
 5. That the grant issued to the petitioner herein Peter K. sawanga be revoked and a fresh grant be issued to the applicant herein, Richard Milikau Anyika
 6. The new administrator to be ordered comply with the orders issued by the court on the 26th day of July 2019.
 7. That the petitioner/ Respondent be condemned to provide costs.



Through an order issued on 26th April 2023, this court allowed temporary stay pending the hearing and determination of the application and the matter was fixed for interpartes hearing on 10th May 2023.

The Applicant's case

2. The application is supported by an affidavit sworn by the applicant and on the grounds appearing on the face of the Application.
3. The Applicant states that he got news of his impending eviction from the land he resides in and this got him concerned because as far as knew, the Petitioner was yet to complete the Administration of the Estate .
4. He further states that it was only upon the perusal of the court file by his Advocate, that he found out that his name has been removed from the list of beneficiaries; that the Respondent approached court in the name of rectification of the certificate of confirmation of Grant , but his real intention was to have his name removed from the list of beneficiaries.
5. According to the applicant, he was never served with the Application dated 25/1/2023 which led to the removal of his name, and despite the courts direction to the respondent to serve other parties in the suit, these directions were not complied with.
6. He further states that on 14/3/2023 when the aforesaid Application came up for interpartes hearing the Respondent misled the court on service, by informing the court that all the parties were present . The above allegations were not true, the Applicant states.
7. It is further the Applicant's case that in any event, the respondent has failed to comply with the court orders of 27th July 2019 directing him to complete the administration of the estate within 60 days from the date of the said order;that, consequently, the grant should be revoked on account of the respondent's failure to diligently administer the Estate .

The Respondent's case

8. Through his replying Affidavit dated 9th may 2023 the Respondent opposes the Application. He avers their late father, the deceased in this cause, had three parcels of land being Butso /Ingotse/620,634 and 746.
9. He further states that prior to their father's demise, the applicant had been given a portion from parcel No. 746 ; that parcel No. 620 was shared out between 10 family members; that consequently the applicant was not entitled to any share.
10. He states that the claim for revocation of the grant was malicious and is only aimed at delaying the implementation of the certificate of confirmation of Grant.
11. The Application was canvassed by way of written submissions.

Applicant's submissions

12. The Applicant reiterates the averments of the Affidavit in support and states that the distribution of the Estate ought to have been done in terms of the orders of Justice Waweru given in may 2001 as affirmed by the ruling of Justice Musyoka on 26th July 2019; that consequently the orders of amendment made on made on 14th march 2023 was done in error. That the amendment constituted an error on the face of the record warranting an order of review, he submits.



Respondent's submissions

13. It is the respondent submissions that the Applicant was not a party to the suit and hence the reason he was not served with the hearing Notice.
14. He submits that the applicant had already been allocated his share by their late father and that the whole purpose of the amendment / rectification of the grant was only due to some spelling error on the names of the beneficiaries.
15. He insists that the objector was a stranger to the suit; that he has complied with the ruling by Hon. Justice Musyoka; and that he followed the court's due process.

Determination

16. I have considered the Application , the parties' Affidavits and submissions and am of the view that the issue to be determined is whether a review ought to be allowed; and whether there are any appropriate orders this court should make.
17. Review is founded on Order 45 of the Civil procedure Rules and this order has been imported to the *law of succession Act* pursuant to rule 63 of the probate and Administration Rules.
18. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows; (1) Any person considering himself aggrieved-
 - a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any additional sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.
19. An applicant seeking orders of review must therefore meet any of the above requirements, that is :
 - a) Discovery of new and important matter.
 - b) Mistake or error on the face of the record.
 - c) Other sufficient reasons.
21. The Court of Appeal in the case National Bank of Kenya Ltd –v- Njau (1995-98) EA 249 held that: “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error must be self-evident and should not require an elaborate argument to be established....”
20. The Applicant's case herein is that there was an error on the face of the record as the amendment of the certificate of confirmation of grant taken out pursuant to the orders of the court made on 24th April 2023 left out his name as a beneficiary.
21. A little background of what has transpired in this cause , and which is relevant to the current of Application, is necessary;- On 29th June 1993 a certificate of confirmation of grant was issued , and an



- amended Grant was issued on 31st October 2001 pursuant to an order issued by Justice Waweru on 5/4/2001.
22. The grant issued on the basis of Justice Waweru's orders addressed the share of the applicant herein in Land parcel No. Butso/Ingotse/620 and determined that he was entitled to an acre from the said portion.
 23. In the Application dated 25th January 2023, the Respondent sought for substitution of the beneficiaries and issuance of an Amended certificate. The Application reads as follows:
 - a). This honourable court do substitute the beneficiaries Richard Omumia (Deceased) with his son Mike Mururu Milikua and also substitute Wiki Milikua (Deceased) with his son Joshua Anyika Omurunga.
 - b). That this honorable court to amend the names of the beneficiaries on the certificate and issue an amended certificate bearing the names as follows: Peter K. Sawanga..... 3 acres Philip Siwanga Milikua..... 2 acres Mike Mururi Milikua..... 2 acres Morice Milikua Siwanga..... 2 acres Zakayo Kwendo Milkua..... 2 acres Erastus Mwanje Milikua..... 2 acres Nikole Ndume Milikua..... 2 acres Datani Kimatsi Milikua..... 2 acres Joshua Anyika Omurunga..... 2 ½ acres Asuman Aloise Milkua..... 2 ½ acres
 - c) That costs be in the cause.
 24. While seeking for the above stated orders, the Respondent represented to the court that the Certificate of confirmation due for amendment was the one issued on 29th June 2023 (paragraph 3 of his Affidavit). Under paragraph 6 of his affidavit, he provided the allocation as per the said certificate issued on 29th June 1993. That grant of 29/6/1993 did not have the Applicant herein as a beneficiary.
 25. However the grant of 29th June , 1993 had been cancelled and replaced with the one issued on 17th may 2001 and further amended on 31st October 2001. Thus the operating certificate of confirmation as at the time of the Respondent's Application dated 25th January 2023 was the one dated 31/10/2001. In that certificate dated 31/10/2001 the Applicant herein was entitled to 1 acre of the suit property as aforesaid. It is evident that in the Application dated 25th January 2023, the name of the Applicant herein had been left out.
 26. It is further evident that the submission of a Grant that was no longer operational was deliberate and was meant to circumvent the orders of Justice waweru made of 9th October 2001 and the certificate of confirmation emanating therefrom.
 27. Nevertheless, I agree with the Applicant that to the extent that the certificate of confirmation of Grant that was purportedly placed before court no longer existed, that constituted an error on the face of the record.
 28. Further the respondent's assertion that the Applicant did not deserve service is indicative of another act of defiance by the respondent . When the Respondent took the date for the hearing of his Application , he was directed to serve the Applicant herein. From his Affidavit he states that there was no need to serve as the Applicant herein was not a party to the suit.
 29. It is not disputed therefore that the Applicant herein was not served with the Application for substitution which, instructively, was orally presented to the court as one for rectification, and nothing was said about the removal of the Applicant from the list of beneficiaries.



30. The certificate of confirmation presented to the court was equally a wrong as aforesaid .That constituted an error on the face of the record and the Application for review is warranted. Consequently the certificate issued on 14th march 2023 will be rectified as will I direct shortly hereafter.
31. The Applicant has further sought that the Grant be revoked on account of the petitioner's failure to complete the Administration of the Estate.
32. This succession cause began its journey in march 1985. It is now on its thirty- eighth year and 5 months of its journey. Two previous judges have expressed their concerns about the delay and gave directions on the fast-tracking on the transmission of the properties. Those directions have been ignored.
33. It is clearly evident that the petitioner has no regard for court orders, if the same do not meet his expectation . Indeed his response to the Application shows that he is still dissatisfied with the court orders of 15th October 1997, which included the Applicant as the respondent. His response to the present Application is also evasive on the question of why the Applicant was left out.
34. I therefore agree with the Applicant that the Petitioner is not keen in distributing the estate. However this matter has taken too long in the courts and am alive to the fact that the beneficiaries are keen to make independent and perhaps effective economic use of their share of the land. However removal of the petitioner from Administration at this stage will only prolong the completion of transmission process.
35. Consequently and for the last time , the petitioner is given another 90 days to complete the transmission process.
36. This court has taken note of the mischief, back- stabbing (by both parties) , and defiance of court orders that has characterised this matter. It is partly because of such antics that the case has been on, for the last 38 years. The parties herein are hereby reminded that the court is not a theatre for their belligerence . Their actions constitute an abuse and misuse of the court process .
37. In the end , I hereby make the following orders:
 - a). The court orders of 14th march 2023 are hereby set aside and the Rectified certificate of confirmation of Grant rectified on 14th march 2023 is hereby cancelled.
 - b). The Amended certificate of confirmation of grant dated 31st October 2001 is hereby further amended limited to substituting the beneficiary Richard Omumia, with Mike Mururi Milikau, and beneficiary Wiki Milikua, with Joshua Anyika Omurunga.
 - c). A further Amended certificate of confirmation of Grant in terms of paragraph (b) hereof to issue for with.
 - c). The Respondent is hereby directed to complete the Transmission of the property to the beneficiaries within 90 days from the date of this Ruling.
 - e). In default of Paragraph (c) above, the Grant of letters of Administration herein shall automatically stand revoked, and the file shall be closed .
 - f). Each party to meet their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS, THIS 26TH DAY OF AUGUST 2024.

S. CHIRCHIR



JUDGE.

In the presence of:

Godwin – Court Assistant

Richard Anyika- The Applicant

Peter Siwanga- The petitioner/Respondent.

