



**In re Estate of Geoffrey Kabuba Nduati (Deceased) (Succession Cause
7 of 2019) [2024] KEHC 10361 (KLR) (21 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
SUCCESSION CAUSE 7 OF 2019
GL NZIOKA, J
AUGUST 21, 2024**

IN THE MATTER OF THE ESTATE OF GEOFFREY KABUBA NDUATI (DECEASED)

IN THE MATTER OF

LORNA MUTHONI NDUATI APPLICANT

RULING

1. By a summons for rectification of grant dated 27th October 2010 brought under the provisions of Rule 73 of the *Law of Succession Act* (although it should be of the *Probate and Administration Rules*) and all the enabling provisions of the law, the applicant is seeking for the following orders: -
 - a. That the properties known as
 - i. 9663/9/10 - Ndundori
 - ii. 1144/20 - Naivasha Municipality
 - iii. 1144/19 - Naivasha Municipality
 - iv. 1144/939 - Naivasha Municipality
 - v. 1144/927 - Naivasha Municipality
 - vi. 11447993 - Naivasha Municipality
 - vii. 3/203 - Naivasha Municipality
 - viii. 3/3 NgorikaBe included as part of deceased's estate
 - b. That costs of this application be in the cause
 1. The application is based on the grounds as reproduced below: -



- a. That Grant of Letters of Administration was issued on 28/7/2008 and confirmed on 12/10/2009 respectively
 - b. That the aforesaid assets have been discovered as assets of the deceased
 - c. That the said assets had not been included in the Grant
 - d. That for interest of justice, they should be included
 - e. Any other reasons to be stated
3. The application is also supported by applicant's affidavit wherein she deposes the contents of the grounds afore save to add that at the time of confirmation of the Letters of Administration Intestate the subject properties had not been discovered and/or the documents evidencing of their ownership had not been traced until recently. That once included they be distributed in terms of the confirmed grant.
 4. Upon considering the application, the court ordered that a consent be filed by all the beneficiaries and they be available in the court for the hearing thereof. Thereafter one of the beneficiaries was said to have died. The applicant requested that the court allows the wife of the deceased to execute a consent. In that regard the proposed widow was to get letters of administration to the estate of her deceased husband. Subsequently she obtained letter of administration *ad litem vide* Chief Magistrate Miscellaneous Succession No. E063 of 2023.
 5. The application was disposed of by the applicant filing of skeleton submissions which was done vide submission dated 23rd April 2024. The applicant submitted that the application was premised on section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules. However, in the body of the application only Rule 73 is cited.
 6. Be that as it were, the applicant further submitted that, rectification under section 74 of the Act is limited to errors as set out in the section and other similar minor errors. That, the present application seeks inclusion of additional properties which will not in any way alter the confirmed mode of distribution in the original confirmed grant as the additional properties are to be held in the name of the Administratrix.
 7. The applicant relied on the case of; In Re Estate of David Karimi Kanegeni -Deceased [2019] eKLR where the High Court stated that "rectification of grant applies to correct errors which can be done without affecting the substance of the grant".
 8. The applicant further submitted that the rectification will not affect the substance of the grant and she urged the court to allow it as prayed.
 9. In considering the application, I note that section 74 referred to herein states as follows:

"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, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly."
 10. In that regard in the case of; In the matter of the Estate of Hasalon Mwangi Kabero (2013) eKLR the court stated as follows -

"An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited



grant. Is an omission of a name or in the description of a thing an error? It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43. In this case it cannot be said that the property was omitted by error or mistake as the administrators did not know of the property at the time they sought letters and confirmation thereof. The omission of the property is a matter that does not fall under the purview of Section 74 of the *Law of Succession Act*.”

11. I entirely concur with the afore holding and hold that section 74 and Rule 73 do not apply in the circumstances herein.

12. In my considered opinion, Rule 63 of the *Probate and Administration Rules* comes into play and states that: -

“(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the *Civil Procedure Rules*, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the *High Court (Practice and Procedure) Rules* (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.

(2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.

13. Pursuant to the above, the court stated in the case of; In *Re estate of Charles Kibe Karanja (Deceased)* [2015] eKLR as follows:

“22. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.

23. The proper approach ought to be an application for review of the orders made at the confirmation of the grant. The remedy of review of court orders is not directly provided for in the *Law of Succession Act* and the *Probate and Administration Rules*, but it is imported into probate practice by Rule 63 of *Probate and Administration Rules*, which has adopted a number of procedures from the *Civil Procedure Rules*. Among the imported procedures is the device of review under the *Civil Procedure Rules*. In the relevant rules on review under



the *Civil Procedure Rules*, an order of the court can be revised on the grounds of an error on the face or the record or discovery of new and important evidence that was not available at the time of the making of the order sought to be reviewed or for any other sufficient reason.

24. Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the court has confirmed the grant or heir or survivor of the deceased who had previously been previously unheard of materializes after distribution, the court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.” (See also; *Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased)* [2013] eKLR)”
14. From the afore, the applicants should have sought for review of the order confirming the grant as provided for under Rule 63 referred to above.
15. The provision of Rule 73 cited states as follows:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
16. From the afore provisions Rule 73 does not provide for rectification of a grant or otherwise.
17. Similarly, the application does not provide a clear mode of distribution of the properties to be added to the estate. The applicant states that the property be distributed “in terms of the confirmed grant”. What exactly are these terms?
18. Furthermore, it is not clear whether it is the order confirming the grant or certificate of the confirmed grant that needs to be rectified if at all. In other words, the error to be rectified is not stated. In an application of the nature herein it is the order confirming grant that need to be reviewed and not rectified.
19. In view of the afore raised issues, the court is not able to allow the summons for rectification of the grant as prayed and direct that, the applicant should deal with all the issues accordingly.
20. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 21ST DAY OF AUGUST 2024

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Wanjohi for the applicant

Ms. Ogutu: court assistant

