In re Estate of Samson Muthui Bachia (Deceased) (Succession Cause 324 of 2003) [2024] KEHC 11270 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11270 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

SUCCESSION CAUSE 324 OF 2003

DKN MAGARE, J

SEPTEMBER 26, 2024

IN THE MATTER OF THE ESTATE OF SAMSON MUTHUI BACHIA (DECEASED)

BETWEEN

MOSES GITAHI MUTHUI ..... APPLICANT

AND

PETER NJOROGE MUTHUI ..... 1ST RESPONDENT

GRACE WANGECHI MUTHUI ..... 2ND RESPONDENT

RULING

Introductions

1. The deceased herein died on 8/9/1999, 24 years ago. This cause was filed on 17/8/2003. The cause was gazetted on 19/9/2003. The day of filing, the petitioners indicated how the property was to be shared. In other words, the first bullet was fired on the day of filing.

2. The grant was subsequently confirmed on 6/4/2005 as indicated earlier in form P&A 5. The certificate of confirmation of grant was confirmed in favour of Moses Gitahi Muthui and Ephraim Nguyo Muthui. They also took most of the entitlement. Sometime in 2017, the court was informed of the death of the two administrators. Subsequently, Peter Njoroge Muthui filed what he called a Notice of Appointment.

3. The said Peter Njoroge Muthui made an application for revocation of grant dated 3/5/2018. The former administrators replied that there was a will where land parcel Githuamba/Muhotetu/Block 2/115 was given to the Applicant's mother (that is Peter Njoroge Muthui's mother). The said mother was said to have left 54 years before then. Moses Gitahi Muthui stated that the applicant left many years before and he was not aware, though he was ready to have Githuamba/Muhotetu/Block 2/115 given to the Applicant.

4. Subsequently, letters of administration intestate were issued to Moses Gitahi Muthui and Peter Njoroge Muthui on 21/2/2019.

5. An application for confirmation of grant was made by Moses Gitahi Muthui seeking the exact distribution as the revoked grant save that land parcel was suggested for Peter Wambugu Muthui, Peter Njoroge Muthui, Johnson Nguyo Muthui and Grace Wangeci Muthui. Parties filed a list of documents and witness statements. Parties were heard and submissions were filed.

6. The court after hearing parties in the initial application, the court allowed the application sharing the entire estate equally among the 10 siblings. The decision was rendered on 13/1/2003. Instead of appealing, the Applicants filed the current Notice of Motion Application dated 25/8/2022 seeking the following reliefs:

    a. Spent

    b. The Honourable Court be pleased to order that Land Parcel No. Tetu/Ichagachiru/188 reverts back to the name of the deceased pending redistribution.

    c. The Court be pleased to review its Ruling and orders issued on 13/1/2022 on distribution of the estate.

    d. The Court be plead to rectify the Grant issued on 13/1/2022.

    e. The costs be in the cause.

7. The application is supported by the affidavit of the Applicant sworn on 25/8/2022 premised on the following grounds:

    a. The co-administrator, one Ephraim Nguyo is now deceased. Prior to his demise the parties had registered Firm RL 19 for the purpose of transmission of Land Parcel No. Tetu/Ichagachiru/188.

    b. The Grant confirmed on 6/4/2005 was revoked on 13/1/2023 on application by the 1st Respondent.

    c. The court distributed the land equally among 10 beneficiaries being the deceased's children from his two houses.

    d. The distribution proposed by the court will disrupt the families who have settled on their respective portions.

    e. Land Parcel No. Tetu/Ichagachiru/188 was wrongly described in the Grant as Land Parcel No. Tetu/Chagachiru/188 which mistake should be rectified.

    f. The grant should be rectified to reflect the correct name of Milkah Wairimu Muthui.

8. The Respondents filed a Relying Affidavit dated 18/5/2023 and sworn by Peter Njoroge Muthui as follows:

    a. No objection to rectification of the Grant to correct errors in description of properties and beneficiaries.

    b. No objection to spouses and children of the deceased Ephraim Nguyo Muthui and Peter Wambugu Muthui taking their shares.

    c. No objection to Land Parcel No. Tetu/Ichagachiru/188 reverting to the deceased's name.

d. The estate ought not be distributed per houses as this issue was settled during protest proceedings to which the Applicant was a party.

9. The parties took directions for the Summons to proceed by way of written submissions.

Submissions

10. The Applicant filed submissions on 26/7/2023. It was submitted that the property should revert to the deceased to allow for redistribution following the demise of an Administrator before revocation and distribution. It is their case that the court has jurisdiction to issue the orders sought. Reliance was placed on Rule 63 of the Probate and Administration Rules to submit that review was permissible.

11. They also cited Re Estate of Mwangi Komo Ruhangi (2015) eKLR to submit that an application to redistribute the estate is in essence an application for review. It is their case that the orders sought are practicable to avoid disturbing settlements already done. They posited that rectification of the grant would be allowed where there were errors and mistakes. They relied on Re Estate of Kahiga Mwathi (Deceased) (2022) eKLR.

12. On the part of the Respondents, they filed submissions on 5/10/2023. It was their submission that review would occasion injustice to the 1st Respondent who is entitled to an equal share in the estate.

13. It was also submitted that the two properties in dispute were not of the same value and the Applicants ought to have known that Land Parcel No. Tetu/Ichagachiru/188 did not belong to them alone while they were putting up the developments.

14. They conceded parts of the application related to rectification of description of names and names of beneficiaries.

Analysis

15. The issues before me for determination are: -

a. Whether the decision of 13/1/2022 given by the court should be reviewed in the manner desired by the Applicant.

b. Whether the Grant issued on 13/1/2023 should be rectified.

c. Whether deceased beneficiaries should be substituted by their wives.

16. I will address the issues seriatim and diagnose structural issues giving rise to the last question.

17. Review of decisions of a probate court is governed by Rule 63 of the Probate and Administration Rules, which provides as follows:

> " -Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules
>
> (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 Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (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.
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> (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."

18. The orders referred have since been repealed and replaced with orders 5, 6, 10, 12,15,19, 45 and 50 of the Civil Procedure Rules, 2010. The rule should as such be read mutatis mutandis as incorporating similar aspects of the Civil Procedure Rules, 2010.

19. A party seeking review of orders in a probate and succession matter, is guided by the provisions of Order 45 of the Civil Procedure Rules, which provides as follows:-

> " (1) Any person considering himself aggrieved-
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
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> (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 other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
>
> (2) ..."

20. Order 45 of the *civil procedure Act* is anchored in section 80 of the *civil procedure Act*. It provides as follows: -

> " Any person who considers himself aggrieved—
>
> (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
>
> (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit".

21. The foregoing means that an application for review, must be to correct an error apparent, or some mistake. It is not to rejig a decision already made or having a second reconsideration. Finality of decision making, is the cornerstone of litigation. In Kamau James Gitutho & 3 others v Multiple Icd (K) Limited & another [2019] eKLR, the Court of Appeal,[VISRAM, KARANJA & KOOME, JJ.A] states as follows: -

> " 46. Looking at the trajectory taken by the applicants in this application, we are convinced that all they seek this Court to do is to set aside the judgment simply because they disagree with same. Clearly that would amount to us sitting on an appeal against our own judgment which is beyond our mandate. In that

regard, this Court in Daniel Lago Okomo vs Safari Park Hotel Ltd & Another [2018] eKLR expressed:

> "We do not review judgments just because a losing litigant is unhappy and despondent. We have no jurisdiction to do so

See also this Court's decision in Mukuru Munge vs Florence Shingi Mwawana & 2 Others [2016] eKLR."

22. The court recalls with concurrence the reasoning of Kuloba J (as he then was) in Lakesteel Supplies vs. Dr. Badia and Anor Kisumu HCCC No. 191 of 1994 where he opined that:

> " The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1, of the Civil Procedure Rules. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the first one is wrong...On an application for review, the court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inheres in every court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power. In the present application it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the ruling was made."

23. To deal with an error or a reasonable ground for review, it shall not be on the basis that the judge failed to appreciate a certain point of fact or law or exercised discretion injudiciously. This is because exercise of discretion is a question of law, which can only be dealt with on an appeal. Further, a mere fact that the decision is seen as unreasonable is not a ground for review. In other words, the review application cannot be based on the inherent merit of the case. The court in Paul Mwaniki vs. National Hospital Insurance Fund Board of Management [2020] eKLR, posited as follows in relation to review: -

> " 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 or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."

24. The court then has to address all the 3 limbs of review. They are: -

    a. Error apparent on the face of the record

    b. Discovery of new evidence that could not be discovered with due diligence.

c. Any other sufficient cause.

25. What constitutes an error apparent on the face of the record must be such that, everyone looking at the record can see. If there were 30 acres of land to share among 10 children and the court gives each child 6 acres, this will amount to an error apparent on the face of the record. If on the other hand the court gives each child 3 acres, instead of 5 acres for boys and 2 for girls, as suggested, it is not an error apparent on the face of the record.

26. An error apparent on the face of the record must be clear even to an inattentive researcher or a sufficiently informed layman. In the case of Nyamogo and Nyamogo Advocates v Kogo [2001] EA 173,174 The Court of Appeal held as hereunder: -

> " We have carefully considered the submissions made to us by the advocates of the parties to this appeal. An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law states one in the face, and there could reasonably be no two pinions, a clear case of an error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the Court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal."

27. In the circumstances, an erroneous decision is not subject to review. It is within the province of appeal. If the Applicant thought, as they are entitled to think that no reasonable court could have reached such a decision, it is not for them to wait for the judge to leave and then test the next court's wisdom. With such, the matters will never be concluded. In this case, there was no ground apparent on the face of the record.

28. The Applicant has not alleged discovery of new facts. Even if they were, the question raised was suggested way back on 17/8/2003, when this cause was filed. In citing D.J Lowe & Company Ltd v Banque Indosuez the court stated as follows: -

> " Where an application for review is based on discovery of fresh evidence, the court must exercise greatest care as it is easy for a party who has lost, to see weak part of his case and the temptation to lay and procure evidence which will strengthen that weak part and put a different complexion. In such event, to succeed, the party must show that there was no remissness on his part in adducing all possible evidence at the hearing." He also cited Rose Kaisa v Angelo Mpanju Kaiza[3]which expressed the need for caution stating "...Before a review is allowed on the ground of discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; ...and if found that the Petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause..."

29. In the case of Alpha Fine Foods Limited v Horeca Kenya Limited & 4 others [2021] eKLR, the court, John M. Mativo, as he then was held as follows: -

> " 18. The power of review can be exercised by the court in the event discovery of new and important matter or evidence which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. As the Supreme Court of India stated: -
>
> > "the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression "any other sufficient reason" ..... means a reason sufficiently analogous to those specified in the rule"

30. The reason for the above limitation is that it is an indulgence given to a party to get the previous decision altered on the basis of discovery of important evidence which was not within his knowledge at the time of original hearing. So, in the fitness of things, a person, who relies on such circumstances to obtain a review, should affirmatively establish them. The latitude shown to a party by a court is conditional upon strict compliance with that requirement.

31. Ordinarily, the expression 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 order was made would refer only to a discovery made since the order sought to be reviewed was passed. An applicant alleging discovery of new and important evidence must demonstrate that he has discovered it since the passing of the order sought to be reviewed.

32. There was nothing in the evidence that can be said to be new evidence. What constitutes sufficient reason is tautological in that there are no parameters given. The same will therefore be read in a manner that accords to the other two grounds, that is an error apparent on the face of the record and discovery of new evidence. In Hosea Nyandika Mosagwe & 2 others v County Government of Nyamira [2022] eKLR, Mugo Kamau J stated as follows; -

> " The Application could also not pass the test of:
>
> "...or for any other sufficient reason ..." which reasons leading authorities hold must be analogous to the other grounds mentioned under the Act and rules, a reason sufficiently analogous to those specified in the rule."
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> In the case of Evan Bwire V Andrew Aginda Civil Appeal No. 147 of 2006 cited fin the case of Stephen Githua Kimani V Nancy Wanjira Waruingi T/A Providence Auctioneers (2016) eKLR the Court of Appeal held as follows:

> "An application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the application or case afresh. In other words, I find no material before me to demonstrate that the applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence."
>
> The current Application falls under the above category. The effect of allowing it would amount to re-opening the case afresh. Litigation must come to an end. Parties must present all the facts, documents and evidence in Court at the appropriate time before the Court retires to write its Judgment. Time and time again Courts have advised litigants that they are bound by their pleadings and that you do not prosecute your case piecemeal. What is demonstrated by the Application is a case of poor pleading which is not what was envisaged by Section 80 of the *Civil Procedure Act* nor the Rules under Order 45."

33. In this case, the court exercised discretion and arrived at the mode of distribution on basis of Section 40 of the *law of Succession Act*, which provide as follows: -

> "(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children. (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38."

34. In the circumstances, the Applicant seeks that this court sets aside the mode of distribution that the court hearing the matter decided on. This is an invitation which I must decline. Parties must learn to appeal on such decisions where they have a conception that the court reached a wrong decision. There must be an end to litigation. The prayer for review is therefore dismissed.

35. The second issue is whether the court will substitute deceased beneficiaries with their spouses. Nothing was placed before me to show that there has been succession in the estates of the deceased beneficiaries. The Law of succession envisages a scenario where the entire process of succession is concluded in a period of about 2 years.

36. The process starts with filing and placing the fact of the filing of the estate in the Kenya gazette. One or two months are expected to be expended on this part.

37. The interested parties require 30 days to object and if not so, letters of administration are issued. Then there is a six months period for carrying out accounts, gathering the estate and finally petitioning. It is expected that at the end of 6 months, beneficiaries are satisfied with the distribution accounts, in which as such the administrator, then files summons for confirmation.

38. The court takes a few months and confirms the grant. The administrator, will have taken all steps to conclude the distribution. If the estate is very large, the court will give more time to conclude distribution. Only continuing trusts are left intact pursuant to Section 83(f) and (i) of the *Law of Succession Act*.

39. At this point the administrator is supposed to render 5 accounts pursuant to section 83(e) and (g) of the *Law of Succession Act*, to the court and requests for discharge. This accounts are: -

    1. The payment account

2. Distribution account

3. Income account

4. Capital account

5. Appropriation account

40. Upon rendering true and just accounts, the administrator is discharged and the estate is closed. This will mark the end of succession. Unfortunately, it appears that in this part of the world that title "administrator" is a life-long affair. This matter ought to have been concluded latest by 2005, 19 years ago. It is still active and kicking. The court endeavored and rendered itself on 13/1/2022. The decision was not appealed from. The question whether each of the houses separately or not was live in those proceedings. The court rendered itself in one way and not the other.

41. That decision may be right or wrong. It is however not a subject of a review application. It is a matter for Appeal.

42. None of the grounds sought are proper for a revocation of the distribution. There is no error on the face. The orders sought require reconsideration of entitlements. It is not in the province of review. In the circumstances, I dismiss in limine the prayer for re-distribution. It lacks merit and it amounts to an appeal to the same court.

43. Secondly there is the issue of rectification of grant. The prayers sought are in two groups, those that fall within the province of rectification and those falling outside rectification. The cardinal principal is that every cause must be for one deceased only. There can be no inheritance of 2 deceased persons.

44. It is no wonder that, I have seen baseless applications for letters of administration for purpose of joining another estate.

45. Beneficiaries fall into place upon death. Rectification of grant is provided for in Section 74 of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rule 43(1) of the Probate & Administration Rules. Section 74 provides as follows:-

> " Errors in names and descriptions, or in setting forth 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."

46. Rule 43(1) Probate & Administration Rules provides that:-

> " Where the holder of the grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time and place of 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 made."

47. As was observed by Muchemi J in In re Estate of Kahiga Mwathi (Deceased) [2022] eKLR, rectification of grant of letters of administration is limited to matters set out in section 74 of the *Law of Succession Act* in principal to corrections of error which the court may order without changing the substance of the grant. These include errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which

is envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of persons or things.

48. The court in the matter of the Estate of Hasalon Mwangi Kahero [2013] eKLR held 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."

49. Rectification is not the same as review. It is not for changing the decision of the court. It also does not provide new rights. At the baseline of this argument is that, there can only be succession for one person in one file. There can be no succession of another deceased person in another deceased's file. In the matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] eKLR the court held that:-

> " The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules....What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general....
>
> Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the *Law of Succession Act*, the applicant ought to approach the court under order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this provision-Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant."

50. The issue of adding other beneficiaries is not a matter for rectification. The deceased beneficiaries of the estate will have their estates. The portions dues to the deceased beneficiaries will be registered in the names of the two deceased's estates, Ephraim Nguyo Muthui (deceased) and Peter Wambugu Muthui (deceased) and the same will be subject to the succession in the particular estates.

51. The proper questions for rectification is in the names of beneficiaries, Ephraim Nguyo Muthui and Peter Wambugu Muthui and land parcel No. Tetu/Ichagachiru/188, which was wrongly named. The said parcel is to be named as such instead of land parcel No. Tetu/chagachiru/188.

52. There is no error in distribution of No. Tetu/Ichagachiru/188 and Gituamba/Mutotu/ Block 2 /115. The same remains as distributed by the court.

53. It is also noted that the Land Parcel No. Tetu/Ichagachiru/188 was already registered under the name of the administrators including one of whom is deceased.

54. The registration under LR 19 is thus reversed. The said parcel of land should revert to the names of the deceased to enable the new administrator to conclude succession.

55. On the other hand, the rectification sought on the basis of swapping the two parcels of land between the two houses on the ground that failure to do so would occasion injustice to the family that has developed their portion in my view and the circumstances of this case does not necessitate the review of the grant. As was held in the case of In the Estate of Simon Ngugi Nganga (Deceased)[2013] eKLR,

> " The other matters do not touch on errors, but on changed circumstances. The death of an administrator is not an error, neither is dead 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 no 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."

56. Furthermore, the Respondent has opposed the reallocation of the parcels in the manner proposed by the Applicant maintaining that the two parcels are not homogenous in value and size and the distribution as per the Grant issued on 13/1/2022 should prevail. In re Estate of Mwangi Komo Ruhangi (Deceased) [2015] eKLR the court stated as follow:

> " An application to redistribute the estate or to vary the distribution is really an application for review of the orders on the confirmation of the grant. It should be handled in much the same way as a confirmation application. The other parties or survivors of the deceased must concur to the redistribution or the changes being proposed. It is not something that can be done ex parte."

57. Therefore, in my analysis, the Applicant has not satisfied the ground to review the ruling dated 13/1/2022 confirming the Grant herein on account of reallocating the impugned land parcels exclusively according to the two houses. As was held in the case of In re Estate of Nderi Munyi (Deceased) (Miscellaneous Succession Cause 30 of 2017) [2023] KEHC 20687 (KLR) (5 July 2023) (Ruling).

58. The net effect of the foregoing is that the Rectified Grant dated 13th January 2022 shall be further rectified only to correct errors in the property description and beneficiary names. I also allow prayer 1 of the Application in that Land Parcel No. Tetu/Ichagachiru/188 shall revert to the name of Samson Muthui Bachia, the deceased, for distribution as per the confirmed grant.

Determination

59. In the upshot, I make the following orders:

    a. Land Parcel No. Tetu/Ichagachiru/188 shall revert to the name of Samson Muthui Bachia, the deceased to be distributed as per the confirmed grant.

    b. The Certificate of Confirmation of Grant dated 13/1/2022 shall be rectified as follows: -

        i. Land Parcel No. Tetu/Chagachiru/188 is rectified to read Land Parcel No. Tetu/Ichagachiru/188.

        ii. The names of Dinamah Kiragu is rectified to read Dynah Wanjugu Kiragu Id No. 5999493.

iii. The names of Milkah Njoki Muthui is rectified to read Milkah Wairimu Muthui.

c. The shares to the deceased beneficiaries, Peter Wambugu Muthui and Ephraim Nguyo Muthui shall be registered in the names of the estates of the said deceased persons pending succession in those estates.

d. Application for review is dismissed.

e. Each party to bear their own costs.

f. The file is closed

DELIVERED, DATED AND SIGNED AT NYERI, ON THIS 26TH DAY OF SEPTEMBER, 2024.

Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

Represented by:-

Mwangi & Partners Advocates for the Applicant

Muchiri Wa Gathoni for the 1st Respondent

Court Assistant – Jedidah