



**In re Estate of Njeru Muruambuci (Deceased) (Civil Appeal
26 of 2019) [2024] KEHC 16081 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL 26 OF 2019
LM NJUGUNA, J
DECEMBER 19, 2024**

BETWEEN

MWANIKI MURANGIRI APPELLANT

AND

NDWIGA MURANGIRI MURUAMBUCI 1ST RESPONDENT

SELESTE MBOGO NJERU 2ND RESPONDENT

AND

FREDRICK NJIRU MWANIKI APPLICANT

RULING

1. The applicant filed summons for rectification of grant dated 12th September 2024 premised on the grounds on its face and in the supporting affidavit thereof. The orders sought are as follows:
 - a. That the name of the administrator Mwaniki Murangiri be deleted and substituted with that of the applicant;
 - b. That the name of Mwaniki Murangiri in the schedule of distribution as a beneficiary of 1.72 Acres out of land parcel number Gatari/Nembure/1435 and 0.643 Acres out of Gatari/Nembure/4098 be deleted and substituted with the names of the applicant and Paul Nyaga Mwaniki in equal shares;
 - c. That parcel number Gatari/Nembure/1435 which comes second in the distribution be rectified to be Gatari/Nembure/4098; and
 - d. The costs of this application be in the cause.
2. The application herein is, to a large extent, similar to a previous application that was struck out by this court through its ruling delivered on 22nd May 2024. The applicant deposed that the administrator of



the estate of the deceased, Mwaniki Murangiri died on 12th June 2023 before distributing the estate. That the applicant has taken out a grant ad litem in the estate of the late Mwaniki Murangiri and would like to substitute him in the administration of the estate of the deceased herein. He also seeks to substitute his father as a beneficiary together with Paul Nyaga Mwaniki. He also stated that on the certificate of confirmation of grant parcel number Gaturi/Nembure/4098 is wrongly indicated as Gaturi/Nembure/1435 and that the error should be rectified.

3. The 2nd respondent opposed the application through a replying affidavit in which he stated that the application is misconceived, bad in law and an abuse of the court process. That the applicant intends to hoodwink the court into granting undeserved orders to him. That the estate of the deceased should only be distributed to his children. That the issues raised herein were determined through a ruling of the court thus it is res judicata and this application is set to frustrate the beneficiaries of the estate.
4. The application was canvassed by way of written submissions.
5. The applicant submitted that the administrator of the estate of the deceased was his father who died before distributing the estate. That he has since obtained a grant ad litem purposely to enable him substitute his father as administrator and beneficiary. That if he substitutes the deceased as a beneficiary, the rights of the other beneficiaries will not be affected. That the error on the face of the certificate of confirmation of grant where the identities of the properties have been interchanged should also be corrected through this application. He relied on the provisions of section 74 of the [Law of Succession Act](#) which provides for rectification of a grant and Rule 43 of the [Probate and Administration Rules](#).
6. The 2nd respondent submitted that the application is an abuse of the court process, the issued in it having been determined through a ruling delivered on 22nd May 2024. That the grant ad litem held by the applicant is for a specific limited purpose and not one to be used for distribution of the estate. He stated that the scope of rectification of grant is limited, thus the orders sought herein cannot be granted.
7. The issue arising for determination is whether this court can grant the orders sought by the applicant under the head of rectification of the certificate of confirmation of grant.
8. Rectification of a grant, before or after confirmation is provided for in the law as follows:

Section 74 of the [Law of Succession Act](#) provides:

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.

Rule 43(1) of the Probate and Administration Rules provides:

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 or 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.

It is clear that rectification of a grant can only be done by the issuing court in a very limited manner that does not go to the substance of the distribution itself. (see the case of *Geoffrey Kinuthia Nyamwinga (deceased)* (2013) eKLR)

9. Through its ruling delivered on 22nd May 2024, the court addressed all the issues raised through the application herein which is almost identical to the application dated 11th December 2023. In that ruling, the court noted that the applicant cannot slip into his late father's shoes as a beneficiary only



since the state of his father's estate is unknown to the court. The court avoided a scenario where the estate of the deceased beneficiary would be given to the applicant alone yet he has other siblings.

10. For that reason, the court struck out the application and stated that until the status of the estate of the deceased administrator's estate is known, and the beneficiaries therein defined, the court cannot redistribute his portion in the deceased's estate through this succession cause. In essence, the applicant was supposed to initiate succession proceedings in the estate of his father and only once the same was concluded, he would be free to move this court for the orders sought. (see paragraph 10 of the previous ruling that has since been reported as *In re Estate of Njeru Muruambuci* (Deceased) [2024] KEHC 5715 (KLR))
11. As it is, the applicant has not proved that succession in his father's estate has been concluded thus it would be highly unconscionable to entertain this application at this time. To do so would prejudice the beneficiaries of the deceased's estate and would trivialize the ruling of the court. In fact, the application is vexatious, frivolous and a waste of the court's time. In the eyes of this court, the orders are still sought prematurely and, in a manner that the court cannot grant them in view of the previous ruling already delivered and of the fact that the condition set by the court has not been met.
12. The fact that the previous application was struck out did not give the applicant an automatic right to bring the very same application before the same court based on the same facts but without meeting the condition set in the previous ruling. Striking out, in this case, was meant to leave the door open for the applicant to move the court once he proves that he has settled succession in his father's estate. Only then was he meant to move this court for the orders because then he would be eligible to do so within the law. As it is, the applicant is trying to have a second bite at the cherry even though he has not satisfied the condition set.
13. I find that the application lacks merit and the same is hereby dismissed with costs to the respondents.
14. It is so ordered

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF DECEMBER, 2024.

L. NJUGUNA

JUDGE

.....for the Appellant/Applicant (Deceased)

.....for the 1st Respondent (Deceased)

.....for the 2nd Respondent

and

.....for the Applicant

