



**In re Estate of Samuel Kipketer Ngeny (Deceased) (Succession Cause  
24 of 2021) [2023] KEHC 2569 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2569 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
SUCCESSION CAUSE 24 OF 2021  
RN NYAKUNDI, J  
MARCH 27, 2023**

**BETWEEN**

**JANE JEPKORIR KENY ..... 1<sup>ST</sup> PETITIONER**

**MARCELA KENY ..... 2<sup>ND</sup> PETITIONER**

**SARAH JEMELI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**REBECCA JEPKOECH ..... OBJECTOR**

**RULING**

- 1 On November 21, 2022, the Applicants filed an undated chamber summons in which they sought for the following orders: -
1. Spent.
  2. That this Honourable Court be pleased to issue leave to enlarge time for amendment of the confirmed grant of the estate of Samuel Kipketer Ngeny (Deceased) issued at Eldoret on December 5, 2019.
  3. That this Honourable Court be pleased to issue orders to amend the confirmed grant of the estate of Samuel Kipketer Ngeny (Deceased) issued at Eldoret on December 5, 2019.
  4. That this Honourable Court be pleased to issue orders compelling the respective beneficiaries holding title deeds of parcels of land numbers; Nandi/kamoiywo/11, Nand1/kamoiywo/478, Nand1/kamoiywo/893, Kipkaren Area Salient/507, Plot Centre Kabiyet No.1, Plot Centre Kabiyet No.6 And Plot Centre Saniak No.4 to surrender the same to the administrators for fresh sub-division and distribution according to the amended grant.



5. That this Honourable Court be pleased to issue an order directing the OCS Mosoriot Police Station to provide security to the Applicants and surveyors for purposes of enforcing peace during the survey and sub-division exercise to be carried out at a date to be fixed by the County surveyors so as to effect the final distribution of the estate of the deceased and ensure completion of the succession process.
6. Costs of the application to be in the cause.
- 2 The application is premised on the grounds therein and is further supported by the affidavit dated November 16, 2022, sworn by Jane Jepkorir Keny, the 1<sup>st</sup> Respondent herein.
- 3 The 1<sup>st</sup> applicant deposed that she is one of the co-administrators of the estate deceased and that a grant of letters of administration intestate in respect of the said estate was made to the administrator therein at the High Court in Eldoret. That the grant was confirmed and a certificate of confirmation of grant was issued on December 5, 2019 by the Honourable Justice S.M. Githinji.
- 4 The 1<sup>st</sup> Applicant contends that while six months have since lapsed from the date of confirmation of grant, the administration of the said estate is yet to be completed as per the requirements of the law. That the confirmed grant has since been rendered inoperative by dint of law and thus there is need to seek leave for enlargement of time for purposes of completing the distribution of the said estate.
- 5 The 1<sup>st</sup> Applicant further deposed that the confirmed grant is ambiguous as it does not clearly define or set out the shares of each beneficiary and units of each house. According to the 1<sup>st</sup> Applicant, there is therefore need to amend the impugned grant so as to ascertain the shares and particulars of each beneficiary. The 1<sup>st</sup> Applicant contends that in the impugned grant, the share of each child of the deceased in the said estate is unascertainable.
- 6 The 1<sup>st</sup> Applicant now wants to employ the provision under section 40 of the [Law of Succession Act](#) to distribute the said estate.
- 7 The 1<sup>st</sup> Applicant further maintains that the impugned grant is not only ambiguous but also lacking in particulars, yet the same is the instrument that would be used to guide the surveyor in preparing the mutation forms that would be used for sub-dividing the estate and thus the need to amend.
- 8 The 1<sup>st</sup> Applicant urged the court to allow the application as prayed.  
The application is unopposed.  
The 1<sup>st</sup> Applicant on December 8, 2022 filed submission dated December 7, 2022.

### **Determination**

- 9 The application is premised on section 74 of the [Law of Succession Act](#) and rule 43(1) of the [Probate and Administration Rules](#). Section 74 provides for the errors on grants of representation that may be rectified by the court. It 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”.



10 The procedure for seeking the relief is set out in rule 43 (1), which echoes Section 74 of the Law of Succession Act, rule 34(1) says: -

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 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.....”

11 An error which may warrant the grant of an order for rectification of grant must relate to: the names or descriptions of any person or thing; the time or place of the deceased’s death and in the case of a limited grant, the purpose for which the grant was made.

12 In the instant case, I was urged by the 1<sup>st</sup> applicant that the certificate of confirmation of grant dated December 5, 2019 is ambiguous as it does not clearly define or set out the shares of each beneficiary and units of each house and thus there is need to amend the impugned grant so as to ascertain the shares and particulars of each beneficiary and complete the process.

13 I have carefully perused the certificate of confirmation on record and it is finding that the same does not clearly the share of each of the beneficiary as had been depicted in the proposed mode distribution. Having found so, I am therefore persuaded that there is need for an amendment so as to capture the true spirit of the beneficiaries wishes as to how the said estate ought to be distributed.

14 Regarding the order seeking to have the OCS Mosoriot, police station provide security to the Applicants and surveyors for purposes of enforcing peace during the survey and subdivision process, it must be noted that court orders are never issued in vain. The 1<sup>st</sup> applicant has no shown that there is an imminent security challenge so as to warrant the issuance of the orders sought. Further the Surveyors in question have also not made any application to this court indicating that they are unable to carry out the said exercise due to security challenges. As it this prayer is premature at this juncture and thus cannot issue.

15 Accordingly, there shall be orders in terms of prayer 2, 3, 4 and 5 of the application. There shall be no orders as to costs.

16 It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF MARCH, 2023.**

**R. NYAKUNDI**

**JUDGE**

In the Presence of Bungei Advocate

