



REPUBLIC OF KENYA



**In re Estate of Muthee Goro (Deceased) (Succession Cause 318 of 1994)
[2023] KEHC 17443 (KLR) (Family) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17443 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 318 OF 1994

MA ODERO, J

APRIL 28, 2023

IN THE MATTER OF THE ESTATE OF MUTHEE GORO (DECEASED)

IN THE MATTER OF

FLORENCE WANJIRU MUTHEE 1ST ADMINISTRATOR

JAMES MUTHAKA MUTHEE 2ND ADMINISTRATOR

RULING

1. Before this court are two applications for determination. The first is the summons for rectification of Grant dated June 5, 2022 filed by Florence Wanjiru Muthee the widow of the Deceased seeking the following orders:-
 1. That the Certificate of Confirmation of Grant made on September 29, 2017 be rectified in line with the Judgment of this honourable court of the same date.
 2. The honourable court be pleased to adopt the proposed rectifications to the Certificate of Confirmation of Grant as per the draft rectified certificate of confirmation attached to the supporting affidavit herein.
 3. Cost be in the cause.
2. The application was premised upon section 74 of the laws of *Succession Act*, cap 160 Laws of Kenya and Rule 43 of the *Probate and Administration Rules* and was supported by the Affidavit of even date sworn by the widow.
3. The second application for determination is the summons for Rectification of Grant dated July 13, 2022 filed by James Muthaka Muthee (An Administrator of the Estate) seeking the following orders:-



1. That the certificate of confirmation of Grant made on September 29, 2017 be rectified in terms of the annexed Draft Amended Certificate of Confirmation by Grant so as to align with the Judgement delivered on September 29, 2017 by the honourable court.
2. That the costs be in the cause”
4. The second application was also premised upon section 74 of the *Laws of Succession Act*, cap 160 Laws of Kenya Rule 43 of the *Probate and Administration Rules* and all other enabling provisions of law and was supported by the Affidavit of even date sworn by the Administrator.

Background

5. The genesis of the two applications is the Judgement which was delivered by Hon. Justice William Musyoka on September 29, 2017. Following that judgement a certificate of confirmed Grant was issued in the name of the Administrators of the estate.
6. The widow assert that the judgment of September 29, 2017 provided that the estate of the Deceased was to be distributed equally to all the survivors. She contends that the certificate of confirmed Grant which was issued on September 29, 2017 contains errors in the mode of distribution set out therein.
7. That whereas the judgement provided that the “assets should be shared out equally amongst all the immediate survivors”, the confirmed Grant issued by the court provided that the assets were to be held absolutely by the survivors jointly.
8. The position of the widow is that the words “absolutely and jointly” are not in line with the courts judgement. She suggests that the respective share of each beneficiary be set out as per the proposed rectified grant annexed to her supporting Affidavit (Annexure FWM ’3’)
9. The Administrator on the other hand avers that the confirmed Grant issued by the court does not comply with the judgement of the court delivered on September 29, 2017. That the court stipulated that the estate be shared out equally amongst the surviving beneficiaries whilst the confirmed Grant indicated that the asses would be held “absolutely and jointly.”
10. The summonses were canvassed by way of written submissions. The widow filed the written submissions dated November 21, 2022 whilst the Administrator relied upon his submissions dated October 16, 2022.

Analysis and Determination

11. I have carefully considered the two applications before this court as well as the written submissions filed by the two parties. The only issue for determination is whether the Grant ought to be rectified and if so in what manner.
12. Section 74 of the *Law of Succession Act* cap 160, Laws of Kenya provides for the rectification of Grants as follows:

“74. Errors may be rectified by court:

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.”



13. Rule 43(1) of the *Probate and Administration Rules* provide that:-

“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 description of any person or thing or as to the time or place of death of the deceased or, in the case of a limited grant, the purpose of for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry an in the cause in which the grant was made.”

14. It is therefore quite apparent that a Grant may only be ‘rectified’ on account of minor errors and/or omissions in names and descriptions.

15. In the case of the court through the judgements delivered on September 29, 2017 set out the terms upon which the estate was to be distributed. Any Grant that does not comply strictly with that judgement would be annulled and could be set aside.

16. I have carefully perused the judgement of Hon. Justice Musyoka. In that judgement at paragraph 12 and 13 it was stated as follows:-

12. I believe that the spirit of both sections 35 and 40 is that the property is shared out equally amongst the survivors. That way there is a fair distribution. The properties were valued, but the parties appear to be still not in agreement on the valuations. After taking into account the affidavits on record, the recorded evidence, inclusive of the annexures and exhibits, I believe justice would be served if all the assets are shared out equally amongst all the immediate survivors of the deceased, that is to say the two sons of the deceased in the first house, and the widow and her eight children in the second house.

13. The application for confirmation of grant here above shall be disposed of in the terms proposed in paragraph 12 here above. The interim grant of letters of administration intestate is hereby upgraded to a full grant. The same shall thereafter be confirmed accordingly. A certificate of confirmation of grant shall issue accordingly. [own emphasis]

17. In the judgement the Honourable Judge stated that the estate was to be shared ‘equally’ amongst all the survivors. However the certificate of confirmed Grant provides that the assets are to be held “absolutely and jointly.”

18. This in my view is a minor error in terminology which can be corrected under a summons for rectification of Grant. The mode of distribution suggested by the widow is tantamount to re-distributing the estate and cannot be accommodated under summons for rectification. However the mode of distribution suggested by the Administrator in my view complies with the judgement delivered on September 29, 2017.

19. Finally I allow the summons for rectification of Grant and direct that the confirmed Grant issued on September 29, 2017 be rectified in line with the Draft Amended certificate of confirmation of Grant (Annexure JMM.’05’) annexed by the Administrator to his supporting affidavit dated July 13, 2022. This being a family matter I make no orders on costs.

DATED IN NAIROBI THIS 28TH DAY OF APRIL, 2023.

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MAUREEN A. ODERO

JUDGE

