



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Alice Mumbi Gakuo (Deceased) (Succession Cause  
294 of 2016) [2023] KEHC 18447 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18447 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 294 OF 2016  
SM MOHOCHI, J  
MAY 30, 2023  
IN THE MATTER OF THE ESTATE ALICE MUMBI GAKUO  
(DECEASED)**

**IN THE MATTER OF  
SIMON WAINAINA GAKUO ..... 1<sup>ST</sup> ADMINISTRATOR  
.ELIJAH NDERITU GAKUO ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. The deceased, the Late Alice Mumbi Gakuo of Shabab-Nakuru died intestate on the June 4, 2014, at the age of 50 years old. The Applicants are Administrators and heirs to the estate.
2. At the time of filing the Petition for Letters of Administration Intestate on the May 12, 2016, the Applicants/Administrator did disclose that the Deceased left behind her estate estimated to be worth Kenya Shillings Three Million, Four Hundred Thousand Shillings (kes3,400,000/-).
3. The Petition for Letters of Administration Intestate dated May 12, 2016 detailed the following assets: -
  - I. NAKURU/MUNICIPALITYBLOCK 29/2100;
  - II. NAKURU/MUNICIPALITYBLOCK 29/3;
  - III. SUBUKIA/SUBUKIABLOCK 29/2100;
  - IV. 1436 KENGEN LTD SHARES;
  - V. Funds of Kshs 80,000/- in Family Bank Account Number 018000043406;
  - VI. Funds of (estimate) Kshs 400,000/- in Family Bank Account Number 01302907XXXXX; and
  - VII. LAIKIPIA/DAIGA ETHI BLOCK 2/403.



4. Petition for Letters of Administration Intestate, dated May 12, 2016 was accompanied by four (4) certificates of official search revealing the deceased's ownership interest the four properties as follows: -
  - i. NAKURU/MUNICIPALITYBLOCK 29/2100 - (entries 1 and 2) Registered in favor of the deceased and title issued on the October 5, 2012;
  - ii. NAKURU/MUNICIPALITYBLOCK 29/3 - (entries 5 and 6) Registered in favor of the deceased on June 30, 2010 and title issued on the July 9, 2010;
  - iii. SUBUKIA/SUBUKIABLOCK 29/2100 - (entries 4 and 5) Registered in favor of the deceased on June 5, 2012 (to hold in trust for herself and her children, Mary Wanjiku Gakuo & Alice Wanjiru Gakuo) and title issued on the June 6, 2012; and
  - iv. LAIKIPIA/DAIGA ETHI BLOCK 2/403 - (entries 2 and 3) Jointly Registered in favor of the deceased and Mary Wanjiku Gakuo on December 5, 2012 and title issued on the December 5, 2012.
5. The Grant of Letters of Administration intestate were issued to the Administrators/Applicants on the 18<sup>th</sup> of April 2017, the Applicants filed Summons for Confirmation of the Grant.
6. Administrators/Applicants on the April 18, 2017 disclosed to the Court that the properties referred to paragraph (5(i-iv)) above, were to be inherited by Alimu Holdings Limited.
7. Alimu Holdings Ltd remains unknown as the Administrators/Applicants have not furnished the Court with form CR12, to demonstrate its shareholding, ownership, and relevancy to the proceedings. The said entity is not and cannot be a beneficiary.
8. With the misdirection by the Administrators/Applicants, the Court allowed the confirmation of the grant on the May 17, 2018 with Alimu Holdings Ltd, inheriting all real assets of the deceased.
9. Following the Confirmation of Grant and realization of the grave error committed on filing the summons the Administrators/Applicants, moved this Court by way of Summons for Rectification of Grant, dated September 30, 2021.
10. The Summons for Rectification of Grant dated September 30, 2021, is brought pursuant to Order 45 of the Civil Procedure Rules, as read together with Rule 63 of the Probate and Administration Rules, seeking to rectify the mode of distribution and is grounded on the following grounds: -
  - i. That the confirmation of grant on the May 17, 2018 and certificate issued was in error;
  - ii. That the errors made on confirmation are grave errors only curable under section 74 of the Laws of Succession Act and Rule 43(1) of the Probate and Administration Rules.
  - iii. That the errors made on confirmation, affect the distribution of the assets of the deceased;
  - iv. That Alimu Holdings Ltd, was erroneously listed as a beneficiary, inheriting the properties described as NAKURU /MUNICIPALITY/ BLOCK 29/2100, NAKURU/ MUNICIPALITY BLOCK 29/3, SUBUKIA 29/2100 and LAIKIPIA/DAIGA ETHI BLOCK 2/403 all real assets of the deceased
  - v. That Alimu Holdings Ltd is in fact not a beneficiary in this proceeding; and



vi. All beneficiaries have consented to the Summons for Rectification.

11. It is against this backdrop, that the Court has been invited to rectify the confirmed grant.

### Issues for Determination

12. After careful analysis, the Court has framed a single issue: -

- i. Whether the Application(s) have satisfied the conditions for grant of Review Orders, Setting Aside Order?

Whether the Application(s) have satisfied the conditions for grant of Review Orders?

13. It is settled law that, Review applications in probate matters, are filed under Order 45 of the [Civil Procedure Rules](#) pursuant to Rule 63 of the [Probate and Administration Rules](#). Order 45 Rule 2 (1) of [Civil Procedure Rules](#) 2010 provides that: -

“(1) Any person considering himself aggrieved—

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- 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.”

### Determinations

14. Indeed, Section 47 of the [Law of Succession Act](#) vests Court with wide discretion in granting protective powers for purposes of safeguarding the estate of a deceased person. It provides: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

15. Similarly, Rule 73 of the [Probate and Administration Rules](#) provides that: -

“73. 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. The reading of the above sections indicate that the High Court is clothed with wide powers to do what is necessary to ensure that the ends of justice are met.

17. This Court finds this summons for rectification of grant qualifying for the exercise of the jurisdiction of the Court provided for, in Order 45 of the [Civil Procedure Rules](#) and Rule(s) 43(1), 63 and 73 of the [Probate and Administration](#) and makes the following Orders/Direction: -



- i. The Grant of Letters of Administration *intestate* issued to the Administrators/Applicants on the April 18, 2017 is hereby Rectified.
- ii. That a rectified Certificate of Confirmation Grant is hereby issued with the following amendments;

<b>1. NAKURU/MUNICIPALITY/BLOCK 29/2100,</b>	<b>To be jointly owned equal Share of 33.3% by the beneficiaries</b> <b>1. Simon Wainaina Gakuo;</b> <b>2. Elijah Nderitu Gakuo; and</b> <b>3. Ann Nyambura Gakuo</b>
<b>2. NAKURU/MUNICIPALITYBLOCK 29/3,</b>	
<b>3. SUBUKIA/SUBUKIABLOCK 29/2100</b>	
<b>4. LAIKIPIA/DAIGA ETHI BLOCK 2/403</b>	

iii. The Administrators are Directed to conclude the Distribution by executing all transmission forms for registration, within six(6) months from today and a mention date shall be assigned to confirm completion.

**Mention on 17<sup>th</sup> October, 2023.**

**DATED, SIGNED and DELIVERED at Nakuru**

**This 30<sup>th</sup> day of May, 2023**

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**Mohochi S.M**

**JUDGE**

**In the presence of: -**

**C.A. Schola**

**Ms. Kimura, N Ikua & Co. Advocates - Applicants**

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