



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of GNN(Deceased) (Succession Cause 1596 of 2015)
[2023] KEHC 21595 (KLR) (Family) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21595 (KLR)

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

FAMILY

SUCCESSION CAUSE 1596 OF 2015

MA ODERO, J

JULY 28, 2023

IN THE MATTER OF THE ESTATE OF GNN (DECEASED)

BETWEEN

IWN APPLICANT

AND

PN 1ST RESPONDENT

WWN 2ND RESPONDENT

RULING

1. Before this Court for determination is the Application for Review of Grant dated July 6, 2021 by which the Applicant IWN seeks the following orders:-
 1. That this Honourable court be pleased to review the orders of the court confirming the grant on November 25, 2020.
 2. That in place of the order confirming Kiserian Plot No xx BUS as property subject for distribution, be removed being a matrimonial property home and its one plot not A and B, the petitioners misled the court.
 3. That the Applicant's children be therefore assigned existent properties as they risk being disinherited if the confirmed grant is confirmed as it is.
 4. The main contestation therefore arises from the just confirmed grant as follows:-
 - (i) The Applicant's children have totally been prejudiced and are losing on getting a share of their deceased father's estate. This is to state that they have not been assigned existent



properties of the estate of their father. As depicted in the certificate of confirmation of grant the following is noticeable;

- (ii) This is totally against the deceased's wishes, being bonafide children of the deceased.
 - (iii) That the suit property Kiserian Plot No xx BUS is exclusively a matrimonial property of the widow. And it is one suit property not A and B, hence trying to mislead the court, a fact that the Respondents are well conversant with.
5. That the Respondents committed a fundamental omission for which the grant ought to be reviewed and orders issued set aside.
 6. That non-disclosure of material facts is prejudicial to the Applicants and undermines justice which is core mandate of the Honourable Court.
2. The summons is brought pursuant to Rule 63 of the *Probate and Administration Rules*, Rule 73 of the *Probate and Administration Rules*, Orders 45 1,2 and 3 of the *Civil Procedure Rules, 2010* and is supported by the affidavit of the applicant of even date.
 3. The summons was opposed by the 1st Respondent who filed an affidavit dated on December 15, 2021.
 4. The 1st Respondent PN opposed the summons through his Replying Affidavit dated December 15, 2021. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated December 3, 2022 whilst the 1st Respondent relied upon her written submissions dated January 9, 2022.

Background

5. This Succession Cause relates to the estate of the late Geoffrey Ngigi Ng'ang'a (hereinafter the 'Deceased') who died intestate on April 3, 2015. The Deceased who was polygamous was survived by two (2) widows and several children.
6. Following the demise of the Deceased Grant of letters of Administration intestate were on September 25, 2019 issued to PN, JMN, IWN and PNN as joint Administrators. The Grant was duly confirmed on November 25, 2020.
7. One of the Administrators Irene Wambui Ngige who is the second wife of the Deceased filed this application seeking to have the confirmed Grant reviewed. The Applicant seeks to have the property described as Kiserian Plot No xx/BUS removed from the schedule of distribution of the Estate.
8. The Applicant avers that Plot xx is her matrimonial home and is not available for distribution amongst the beneficiaries of the estate. She insists that contrary to the indication in the confirmed Grant that this Plot xx consists of two plots described as 'A' and 'B' the property actually comprises of only one plot which is her matrimonial home.
9. The Applicant further states that her children stand to be disinherited as they have been assigned a non existent asset. That the description of Kiserian Plot No xx as 'A' and 'B' is misleading and if not corrected will prejudice some of the beneficiaries of the estate.
10. The 1st Respondent in opposing this application states that the Applicant was fully involved in the Succession proceedings and indeed she was appointed as an Administrator of the estate yet she raised no objection to the mode of distribution of the estate as set out in the confirmed Grant dated November 20, 2020.



11. The 1st Respondent denies that Plot xx is the matrimonial home of the Applicant and instead asserts that the same constitutes part of the estate of the Deceased and is available for distribution. He explains that Plot xxB is a commercial building with units for rental including shops. That the building consists of two (2) blocks which are Plot xx A and Plot xx B.
12. The 1st Respondent states that the matrimonial home of the Applicant is in Kisamis Town in Kajiado County. He queries on how the transfer of Plot xxB to the name of the Applicant was made at time when the Deceased was unwell, immobile and bedridden and therefore could not have gone to the offices of the County Government in order to effect a transfer to the Applicant.
13. The 1st Respondent states that following a ruling delivered by Hon. Justice Muchelule (as he then was) on September 23, 2019 parties were given thirty (30) days to respond and/or object to the summons for confirmation of Grant. That the Applicant did not file any objection but refused to sign the consent to confirmation of the Grant. That on the date for hearing of the Summons for Confirmation of Grant neither the Applicant nor her Advocate appeared in Court. The Grant was therefore confirmed in her absence.
14. The 1st Respondent contends that this present application is *res judicata*. That the same is scandalous, vexatious and amounts to an abuse of court process. He prays that the application be dismissed with costs to the Respondents.

Analysis and Determination

15. I have carefully considered the application dated July 6, 2021, the reply filed thereto as well as the written submissions filed by both parties.
16. The only issue for determination is whether the Grant ought to be reviewed/rectified as prayed by the Applicant.
17. Rectification/Review of grants is provided for in Section 74 of the [Law of Succession Act](#), Cap 160, Laws of Kenya and Rule 43(1) of the [Probate and Administration Rules](#). Section 74 provides as follows: -

“74. Errors in names and descriptions, or in setting fourth 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.”
18. Rule 43(1) provides as follows:-

“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 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.”
19. From the language of section 74 of the [Law of Succession Act](#) and Rule 43(1) of the [Probate and Administration Rules](#), the scope of ‘rectification’ of Grants of representation is limited to 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. Such other minor errors in that genre can also be rectified through a Summons for rectification of Grant.



20. The changes being proposed by the Applicant are not mere minor errors in names and descriptions she is seeking to remove from the schedule of distribution one of the assets which has been listed as available for distribution. This is substantial change to the Grant and to the mode of distribution of the estate.
21. The Applicant has all along participated in these Succession proceedings. She is in fact one of the Administrators of the estate. The Applicant was allowed an opportunity to file an objection to the summons for confirmation of Grant. She took no action. Why wait for the Grant to be confirmed if she believed that a non-existent property had been included for distribution?
22. The reasons advanced by the Applicant do not merit the review or rectification of the Grant. The only remedy available to the Applicant is to file a summons for Revocation of the Grant.
23. Finally, I find no merit in this application. The application dated July 6, 2021 is hereby dismissed in its entirety. This being a family matter each side will bear their own costs.

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

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MAUREEN A. ODERO

JUDGE

