



REPUBLIC OF KENYA



**NG'ETH & 3 others v NG'ETHE (Succession Cause 124 of 2008)
[2023] KEHC 21632 (KLR) (7 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 124 OF 2008
RN NYAKUNDI, J
AUGUST 7, 2023**

IN THE MATTER OF THE ESTATE OF NAOMI NJERI NG'ETHE (DECEASED)

BETWEEN

**JORAM KAINGWA NG'ETHE 1ST APPLICANT
JORAM KAINGWA NG'ETHE 2ND APPLICANT
SAMSON NJUGUNA NG'ETHE 3RD APPLICANT
ELIZABETH WAMBOI NG'ETHE 4TH APPLICANT**

AND

MONICA WANJIKU NG'ETHE RESPONDENT

RULING

1. The applicant approached this court *vide* a summons for rectification and confirmation of grant dated April 18, 2023 seeking the following orders;
 1. That the application be certified urgent for hearing on a priority basis.
 2. That the Grant of Letters of Administration Intestate made on February 5, 2009 be rectified by removing the name of Monica Wanjiku Ng'ethe as a Co-administrator of the Estate of the late Naomi Njeri Ngethe (Deceased).
 3. That pursuant to granting of prayer (b) above, a Rectified Grant of Letters of Administration Intestate be issued to Joram Kaingwa Ng'ethe and be confirmed in terms of paragraphs 2 and 4 of the Applicants Affidavit on Mode of Distribution dated January 31, 2023 and filed in court on February 1, 2023.
 4. That the costs of this application be in the cause.



2. The application is expressed to brought under rule 43, 49 and 73 of the Probate and Administration Rules and Section 47, 66 (b) and 71(2) (b) of the [Law of succession Act](#) Cap 160 of the Laws of Kenya.
3. The applicant contends that the deceased was survived by the following beneficiaries;
 1. Joram Kaingwa Ng'ethe
 2. Monica Wanjiku Ng'ethe
 3. Paul Mburu Ng'ethe
 4. Stephen Kiarie Ng'ethe
 5. Samson Njuguna Ng'ethe
 6. Elizabeth Wamboi Ng'ethe
4. The applicants deposed that the issue of ownership of Land Title Numbers Uasin Gishu/Kimumu 1946, 1947 and 1949 was a subject of an acrimonious and costly court litigation in Eldoret ELC No 300B of 2012 (Joram Kaingwa Ng'ethe (Suing as the personal representative of the Estate of the late Naomi Njeri Ng'ethe (Deceased) VS Monica Wanjiku Ng'ethe wherein judgment was delivered on 26th July, 2018 in favour of the Estate as against the defendant Monica Wanjiku Ng'ethe, who is the Respondent herein.
5. The applicant's contention is that the clearly the respondent's conduct as enunciated in the judgment aforestated was grossly inimical and prejudicial to the Estate and as such she is not entitled to be a Co-administrator thereof. That she has occasioned a delay and frustration in distribution of the estate and as such it is in the best interest of justice and the estate that the court rectify the Grant of Letters of Administration Intestate made on February 5, 2009 by removing the name of Monica Wanjiku Ng'ethe as a Co-administrator of the Estate of the late Naomi Njeri Ng'ethe (Deceased).

Analysis & Determination

6. Rectification 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:

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.”

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.”
7. 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. I may add that such other minor errors in that genre could also be rectified.
8. However, section 47 of the [Law of Succession Act](#) sets out the jurisdiction of the court as follows;



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:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

9. Under the powers granted to this court under section 47 of the act and upon considering the judgement in E&L Case No 300'B' of 2012, it is my considered view that it is in the interest of justice and the estate to grant the orders sought. In the premises, the application succeeds and I order as follows;

The Grant of Letters of Administration Intestate made on February 5, 2009 be rectified by removing the name of Monica Wanjiku Ng'ethe as a Co-administrator of the Estate of the late Naomi Njeri Ngethe(Deceased).

A Rectified Grant of Letters of Administration Intestate be issued to Joram Kaingwa Ng'ethein terms of paragraphs 2 and 4 of the applicants' affidavit on mode of distribution dated January 31, 2023.

Costs of this petition to be in the cause.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 7TH DAY OF AUGUST 2023

.....

R.NYAKUNDI

JUDGE

