



REPUBLIC OF KENYA



**In re Estate of Mwaure Gitachu (Deceased) (Succession Cause 784 of 1990)
[2023] KEHC 24493 (KLR) (Family) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 784 OF 1990
MA ODERO, J
OCTOBER 27, 2023
IN THE MATTER OF THE ESTATE OF MWAURA GITACHU (DECEASED)**

**IN THE MATTER OF
JOSHUA GITACHU MWAURA 1ST EXECUTOR
HENRY GITAHU MWAURE 2ND EXECUTOR
AND
SAMUEL KARURU MWAURA APPLICANT**

RULING

1. Before this Court for determination is the Notice of Motion dated 15th November 2022 by which the Applicant Samuel Karuru Mwaura and Henry Gitachu Mwaura seek the following orders:-
 - “1. Spent.
 2. That Prayer 3 of the Notice of Motion application dated 9th May 2022 be amended by deleting the words “its judgement dated 15th October 2021” and replacing them with “Ruling dated 27th April 2022”.
 3. That the costs of this application be provided for.
2. The Application was premised upon Section 1A, 1B and 3A of the *Civil Procedure Act* Cap 21 laws of Kenya, Order 8 Rule 3 (1) of the *Civil Procedure Rules* and all enabling provisions of law and was supported by the Affidavit of even date sworn by Abincha Bryan Moturi an Advocate of the High Court of Kenya.



3. The Beneficiaries opposed the Application through the Grounds of Opposition dated 9th February 2023 which was premised on Grounds:-

- “ 1) That the application is incurably defective and an abuse of the court process as the Applicant has already filed a Notice of Appeal.
- 2) That even if it had been a valid application, it would still not meet the threshold for review.
- 3) That the application is brought in bad faith and is meant to further delay distribution of the Estate while the Applicants benefit the estate.
- 4) That the court was right to hold that variation was necessary in order to comply with the statutory provisions.
- 5) That all parties were equitably and legally protected in the sub-division of the Estate.”

4. The application was canvassed by way of written submissions.

Analysis and Determination

5. I have carefully considered the application before the court, the Reply filed thereto as well as the written submissions filed by the parties.

6. The application before the court is basically one seeking amendment of pleadings. The Applicant seeks to amend prayer (3) of the application dated 9th May 2022 which it was said arose due to an inadvertent mistake due to a typographical error.

7. Order 8 Rule 3(1) of the [Civil Procedure Rules](#) 2010 allow for amendment of pleadings either upon application or ‘*suo moto*’ by the court.

8. In the case of [Daniel Ngetich and Another v K-Rep Bank](#) [2013] eKLR the court stated:-

“Normally the court should be liberal in granting leave to amend pleadings. But it must never grant leave if the court is of the opinion that the amendment would cause injustice or irreparable loss to the other side or if it is a devise to abuse the process of the court.”
Amendment ought to be allowed when:

- a. They do not work injustice to the other side.
- b. They are necessary for the purposes of determining the real question in controversy between the parties.”

9. The Applicant has pleaded that the error they seek to amend was inadvertent due to a typographical error. I have considered the amendment being sought. In my view it will not prejudice the other side who will equally be granted an opportunity to respond to the amended application.

10. Finally, I allow this application in terms of Prayer (2) thereof. No orders on costs.

DATED IN NAIROBI THIS 27TH DAY OF OCTOBER, 2023.

MAUREEN A. ODERO

JUDGE

