



In re Estate of Grace Wanjiru Mbuthia (Deceased) (Succession Cause E1495 of 2021) [2023] KEHC 24961 (KLR) (Family) (26 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1495 OF 2021
EKO OGOLA, J
OCTOBER 26, 2023
IN THE MATTER OF THE ESTATE OF GRACE WANJIRU MBUTHIA (DECEASED)**

**IN THE MATTER OF
ROBERT KARIUKI MBUTHIA 1ST APPLICANT
PAULINE WAKONYO LUGABA 2ND APPLICANT**

RULING

1. The Summons for rectification of grant before this Court is dated 27th June 2023. The Applicants pray for the grant issued to them on 8th February 2022 and confirmed on 7th March 2023 be rectified to include Githunguri/Githunguri/3337, Kenyatta Market stall 199, Shares at Safaricom Ltd and British American Investments (K) Ltd.
2. The applicants deposed in their joint affidavit that at the time of drawing her Will, the deceased inadvertently omitted to list the aforesaid assets. The applicants have annexed to the Summons a copy of a consent to rectification of grant signed by Catherine Njeri Njoroge and Agness Wanjiku Thubei.
3. As evidence to prove that the said assets belonged to the deceased, the applicants have annexed to the Summons a copy of the Title deed to the plot known as Githunguri/Githunguri/3337, a letter from the Nairobi City Council for the Kenyatta Market stall, and a stock holding invoice stating the stocks that the deceased held in several companies including the aforementioned shares.



Determination

4. I have considered this Summons for Rectification of Grant and the Affidavit in support thereto. Rectification of Grants is provided for by Section 74 of the [Law of Succession Act](#), Cap 160, Laws of Kenya which 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.”

5. Rule 43(1) of the [Probate and Administration Rules](#) further stipulates that:-

“43(1) 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 the 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 issued.”

6. From the aforementioned provisions, rectification is allowed in order to correct a misdescription of a property or to correct a name which has not been fully or properly described in the Grant.

7. So, does discovery of new assets fit in the conditions stipulated in the aforementioned provisions? [In Re Estate Of Charles Kibe Karanja \(Deceased\)](#) 2015 eKLR the Court held as follows:-

“If there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”

8. From the foregoing I find that the sweeping changes of adding new assets to the already confirmed grant does not fall under the scope of rectification under section 74. Applicants should have applied for a review of the confirmed grant on the grounds of discovery of new assets that were not known to them at the time of applying for confirmation of grant. However, this Court is still clothed with jurisdiction to issue orders that will meet the end of justice. Rule 73 of the [Probate and Administration Rules](#) provides that:-

“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.”

9. The upshot is that I allow the Summons dated 27th June 2023 as prayed. Cost of the Application be in the cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF OCTOBER 2023



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E.K. OGOLA

JUDGE

In the presence of:

..... for the Applicant

Gisiele Muthoni Court Assistant

