



**In re Estate of Geoffrey Kamau Gathu (Deceased) (Succession Cause  
1355 of 2010) [2023] KEHC 26409 (KLR) (Family) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26409 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE 1355 OF 2010**

**SN RIECHI, J**

**DECEMBER 15, 2023**

**IN THE MATTER OF THE ESTATE OF THE  
LATE GEOFFREY KAMAU GATHU (DECEASED)**

**BETWEEN**

**ALICE NJERI MAINA ..... APPLICANT**

**AND**

**RUTH WANJA GICHUKI ..... 1<sup>ST</sup> RESPONDENT**

**ALICE WAIRIMU MAINA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Succession Cause relates to the estate of Geoffrey Kamau Gathu (hereinafter 'the Deceased') who died intestate on 25<sup>th</sup> January, 2010. A copy of the Death Certificate Serial No. 303062 is annexed to the Petition for Grant of Letters of Administration Intestate.
2. Following the demise of the Deceased on 7<sup>th</sup> July 2010, the two Applicants Alice Wairimu Maina and Catherine Wanjiru Mbaya filed a Petition seeking to be issued with letters of Administration intestate. The grant of letters of administration was issued on 27<sup>th</sup> January 2011 to Alice Wairimu Maina and Catherine Wanjiru Mbaya Gichuki.
3. Consequently the petitioners filed for confirmation of grant and the grant was rectified and confirmed on 13<sup>th</sup> June 2012 and a certificate of confirmation of grant was issued to Alice Wairimu Maina and Ruth Wanja Gichuki. According to the certificate of confirmation of grant, According to the certificate of the confirmed grant, ½ acre out of LR Muguga/Muguga/235 was to be sold to meet school fees expenses for the minor children and their upkeep.



4. Unfortunately, the certificate of confirmation did not mention specifically on how the remaining one acre was to be shared despite the application requesting the same to be registered in the name of the applicant Alice in trust for the minors. Following that court order, Alice Maina the Administratrix entered into a sale agreement with one James Mbaya Maina who bought the ½ acre at a purchase price of Kshs.1,153,000 receipt of which she acknowledged as Kshs.995,000 vide bankers cheque No. 26125 and Kshs.158,900 vide bankers cheque No. 221087. That despite the sale and full payment of the purchase price, the petitioner refused to transfer the ½ acre in compliance with the certificate of confirmation. Following the death of Mbaya Maina the purchaser, his legal representative Alice Njeri Maina the applicant herein filed a notice of motion dated 17<sup>th</sup> April 2018 and filed the same day seeking orders that;An order do issue compelling the resp ondents to execute transfer documents and transfer title documents thereto for purposes of transferring the ½ acre out of LR Muguga/Muguga/235 to the applicant.
5. Upon hearing the application the court ordered via a ruling dated 3<sup>rd</sup> December 2018 that the applicant as the legal representative to the estate of James Mbaya Maina the buyer is entitled to ½ acre out of land parcel No. Muguga/Muguga/ 235. The court ordered that the respondents be and are hereby directed to facilitate and sign all necessary documents to transfer of ½ an acre out of LR Muguga/Muguga/235 to the name of Alice Njeri Maina being the legal representative of the late James Mbaya Maina the purchaser within 60 days from the date of delivery of this ruling. That the certificate of confirmation made on 13<sup>th</sup> June 2012 be amended to read one acre out of LR Muguga/Muguga/235 to be registered in the name of Alice Wairimu Maina in trust for her two sons and Alice Wairimu Maina to hold life interest.
6. Subsequently the applicant has filed a summons for amendment of confirmed grant dated 1<sup>st</sup> September 2022 by which Alice Njeri Maina the applicant seeks the following orders:-
 

" "

  1. That the certificate of confirmation of Grant dated 13<sup>th</sup> June 2012 issued to ALice Wairimu Maina & Ruth Wanja Gichuki be rectified and amended to include Alice Njeri Maina as one of the beneficiaries of the estate of the late Geoffrey Kamau Gathu(Deceased).
  2. That the certificate of confirmation of grant issued on 13<sup>th</sup> June,2012 and dated 13<sup>th</sup> June,2012 be rectified and amended to read that one acre out of LR Muguga/Muguga/235 be registered in the name of Alice Wairimu Maina in trust of her two sons Lee Gathu Kamau and Telviv Maina Kamau and Alice Wairimu Maina to hold in life interest.
  3. That costs of this application be in the cause."
7. The summons is premised on grounds on the face of it and was supported by the Affidavit of even date sworn by Alice Njeri Maina. She briefly state that despite the administrators of the estate being aware of the court ruling delivered on 3<sup>rd</sup> December 2018 by Hon.Justice J.Onyiego they have refused to comply with said order. She states that it would be just and appropriate that the confirmed grant be amended to in terms with the court's ruling.
8. The 2<sup>nd</sup> respondent Ruth Wanja Gichuki filed a Replying Affidavit dated 20<sup>th</sup> September 2022 in response to the summons. She deposes that she has never been petitioner or administrator to the estate in this cause and therefore cannot be a party to the application. She deposes that her name should be struck out from the proceedings.



9. The applicant filed a reply to 2<sup>nd</sup> respondent's replying affidavit dated 20<sup>th</sup> September 2022. She deponed that the 2<sup>nd</sup> respondent is a co-administrator in the estate of Geoffrey Kamau Gathu as evidenced by attached annexure ANM1.
10. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 10<sup>th</sup> July 2023 whilst the Respondents did not file written submissions. The applicant in her submissions reiterated averment in her affidavit and do not need to reproduce them at this stage.
11. The main issues for determination is whether this court should make order that the certificate of confirmation of grant dated 13<sup>th</sup> June 2012 should be amended and rectified to include Alice Njeri Maina as a beneficiary of the estate. secondly whether the certificate of confirmation of grant dated 13<sup>th</sup> June 2012 should be rectified to read that one acre of LR Muguga/Muguga/235 be registered in the name of Alice Wairimu Maina to hold in trust of his children.
12. 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 of the Law of Succession 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) of the Probate and Administration Rules provides:-

" 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."
13. From the language of section 74 of the [Law of Succession Act](#) and rule 43(1) of the [Probate and Administration Rules](#), it would appear that the provisions relate to rectification of errors in grants of representation.
14. Notably, it appeared to this court that the Applicant sought to rectify the Certificate of Confirmation of Grant. In the foregoing, the certificate of confirmation of grant had nothing to do with section 74 of the [Law of Succession Act](#). It was not one of the documents to be rectified under section 74 of the laws of Succession Act because the provision is limited to grants of representation, whether full or limited. That would then mean that if there are any errors on the face of a certificate of confirmation of grant, the same would not be available for rectification under section 74 of the Law of Succession.
15. The errors on the impugned certificate of confirmation of grant would therefore be errors on the face of the record, which would be redressed through a review application, filed under rule 63 of the [Probate and Administration Rules](#), which imports the provisions in the Civil Procedure Rules on review.
16. In this instant case the Applicant is proposing to be included as a beneficiary of the estate of the estate following court order dated 3<sup>rd</sup> December, 2018 and that the certificate of confirmation of grant dated 13<sup>th</sup> June 2012 be rectified and amended to read that one acre of LR Muguga/Muguga/235 be registered in the name of Alice Wairimu Maina to hold in trust of his children and Alice Wairimu Maina to hold in life interest.



- 17. This are Changes which are fundamental and alter the core of the document cannot be effected by way of rectification. In the premises this application for amendment of Grant is misconceived. The proper way to effect the desired changes is to apply for the original Grant to be revoked and or set aside, the certificate of confirmation be recalled and then to be re-issued in the desired terms or on fresh confirmation to include the applicant as a beneficiary.
- 18. In the premises I find that application dated 1<sup>st</sup> September 2022 without merit and the same is hereby dismissed.

**DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF DECEMBER 2023.**

.....

**S. N. RIECHI**

**JUDGE**

