



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT CHUKA**

**SUCCESSION CAUSE NO. 67 OF 2016**

**IN THE MATTER OF THE ESTATE OF MUGIRA NGARUNI (DECEASED)**

**NKANATA MUGIRA ..... ADMINISTRATOR/APPLICANT**

**R U L I N G**

1. Before this court is the Notice of Motion application dated 2<sup>nd</sup> August 2021. The application is premised on the grounds on the face of it and is supported by the affidavit of Nkanata Mugira sworn on 2<sup>nd</sup> August 2021 in which he depones that land parcel no. L.R. Mwimbi/Central/Magutuni/847 forms part of the deceased's estate but was erroneously not included in the distribution schedule.
2. The Applicant thus seeks for the review of the Certificate of Confirmation of Grant dated 13<sup>th</sup> July 2020 to include land parcel no. L.R. Mwimbi/Central/Magutuni/847.
3. The application is not opposed.
4. Mr. Kiruai, counsel for the Applicant, made his oral submissions on 02/11/2021. He relied on the affidavit in support of the application, Rule 73 of the Probate and Administration Rules and the decision of this court in the case of **In re Estate of Kanyingi Gatwe (Deceased) [2018] eKLR**. The Applicant thus prayed for the application to be allowed.

**Analysis**

5. The application is expressed to be brought under the provisions of Rule 63 of the Probate and Administration Rules, Order 45 of the Civil Procedure Rules, Sections 1A, 1B, 3 & 3A of the Civil Procedure Act and Article 159 of the Constitution of Kenya.
6. It is clear from the court record that the Applicant is the administrator of the estate of Mugira Ngaruni (deceased), who died on 26<sup>th</sup> December 1998. The Applicant is also the sole beneficiary of the subject estate.
7. According to the Applicant, the estate of the deceased comprises of two land parcels to wit L.R. No. Mwimbi/Central Magutuni/309 and L.R. No. Mwimbi/Central Magutuni/ 847 but the latter property was erroneously not included in the Certificate of Confirmation of Grant dated 13<sup>th</sup> July 2020.
8. Vide a summons application for rectification of grant dated 4<sup>th</sup> September 2020, the Applicant herein sought to rectify and amend the said Certificate of Confirmation of Grant so as to include land parcel no. L.R. No. Mwimbi/Central Magutuni/ 847 in the distribution schedule.
9. The application was however dismissed on the grounds that the proper approach to include assets of an estate that had been inadvertently left out of the confirmation application is through review of the confirmation orders and not through an application for rectification of grant. This court gave a detailed ruling on this on 22<sup>nd</sup> July, 2021.
10. The rules further provide at **Rule 73:-**

***“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.”***

11. These rules give a party a leeway to file an application which is not otherwise provided for under the rules and affirms the inherent jurisdiction of the Courts to make such orders as may be necessary for the ends of justice. In this matter the administrator is seeking to amend the grant to include properties which were omitted by error.

12. As stated by this court in **In re Estate of Kanyingi Gatwe** (*supra*) “where property is discovered after confirmation, the parties have a window to go back to Court with an application for review for the confirmation of the grant to be reconsidered within the same cause.”

13. I have perused the judgment of this court, although differently constituted, that was delivered on 8<sup>th</sup> July, 2020. I have also perused the search certificate for the land parcel no. L.R. No. Mwimbi/Central Magutuni/ 847 which is annexed to the application. I also note that the Applicant has now moved this court through the proper approach which is that of an application for review. In my view, the Applicant has demonstrated to this court that the said land parcel belongs to the deceased’s estate and should therefore be included therein at this point.

### **Conclusion**

In view of the foregoing, I find that the application is merited. I order as follows:

- 1) The application is allowed.
- 2) The certificate of confirmation of grant dated 13/7/2020 is reviewed.
- 3) Land Parcel No. Mwimbi/Central Magutuni/847 be included in the schedule of the properties of the deceased and be distributed to the beneficiary.

**Dated, signed and delivered at Chuka this 16<sup>th</sup> day of December 2021.**

**L.W. GITARI**

**JUDGE**

**16/12/2021**

The ruling has been read out in open court

**L.W GITARI**

**JUDGE**

**16/12/2021**