



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT CHUKA**  
**SUCCESSION CAUSE NO. 12 OF 2015**  
**IN THE MATTER OF THE ESTATE OF NKURU NKURI (DECEASED)**  
**VERONICA GACHERI ..... PETITIONER/APPLICANT**

**R U L I N G**

1. This cause relates to the estate of the late Nkuru Nkuri (deceased) who died intestate on 9<sup>th</sup> February 2011.
2. Before this court is the Notice of Motion application dated 4<sup>th</sup> March 2021. The application is premised on the grounds on the face of it and is supported by two affidavits of Veronica sworn on 4<sup>th</sup> March 2021 and 2<sup>nd</sup> August 2021 respectively.
3. The Applicant seeks for the review of the Certificate of Confirmation of Grant dated 29<sup>th</sup> June 2020 to include land parcels no. Karingani/Weru/1230; Karingani/Weru/1236; and Karingani/Weru/1237.
4. The application is not opposed.

**Analysis**

5. The application is expressed to be brought under the provisions of Rule 63 of the Probate and Administration Rules.
6. The Applicant is the only surviving daughter of the deceased and also the administrator of the subject estate. According to her, the estate of the deceased comprises of the following properties:
  - a. Karingani/Weru/1233
  - b. Karingani/Weru/1234
  - c. Karingani/Weru/1296
  - d. Karingani/Weru/1298
  - e. Karingani/Weru/1230
  - f. Karingani/Weru/1236
  - g. Karingani/Weru/1237
7. The Applicant depones that after confirmation of grant, she discovered that land parcels no. Karingani/Weru/1230; Karingani/Weru/1236; and Karingani/Weru/1237, which form part of the estate of the deceased, were not captured in the distribution of the estate.

**8. Rule 73 of the Probate and Administration Rules** provide as follows:

**“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. 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 not captured during the confirmation application.

10. As stated by this court in **In re Estate of Kanyingi Gatwe (Deceased) [2018] eKLR** “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.”

11. This was the same position that was held by Justice Musyoka in the case of ***In re estate of Charles Kibe Karanja (deceased) [2015] eKLR*** where the learned judge stated as follows:

**“Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error.”**

12. I have perused the search certificates annexed to the Applicant’s further affidavit sworn on 2<sup>nd</sup> August 2021. They are in respect to the land parcels no. Karingani/Weru/1230 and Karingani/Weru/1236 and provide evidence that the two properties are registered in the name of the deceased, Nkuru Nkuri. I however note that no evidence has been annexed to the application to show that the land parcel no. Karingani/Weru/1237 belong to the deceased.

13. In the circumstances, it is my view that the Applicant has demonstrated to this court that only land parcels no. Karingani/Weru/1230 and Karingani/Weru/1236 belong to the deceased and should therefore be included as part of the subject estate.

### **Conclusion**

14. In my view, the upshot of the foregoing is that the present application is partially successful and should be allowed to the extent that only land parcels no. Karingani/Weru/1230 and Karingani/Weru/1236 be included as properties forming part of the estate of the deceased. In addition, I opine that the two aforementioned properties be distributed to Veronica Gacheri as proposed in paragraph 3 of the affidavit in support of the present application.

I order that:-

1. The certificate of confirmation of grant issued on 29/6/2020 is reviewed so as to include Land Parcels-
  - Karingani/Weru/1230
  - Karingani/Weru/1236 on the schedule.
2. The two Land Parcels be distributed to Veronica Gacheri.
3. I make no orders on land Parcel No. Karingani/Weru/1237.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 16<sup>TH</sup> DAY OF DECEMBER, 2021**

**L.W, GITARI**

**JUDGE**