



**In re Estate of Late Sophia Michere Njogu (Succession Cause
1092 of 2013) [2025] KEHC 2293 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 1092 OF 2013
EM MURIITHI, J
FEBRUARY 13, 2025**

IN THE MATTER OF THE ESTATE OF LATE SOPHIA MICHERE NJOGU

IN THE MATTER OF

GRACE MUTHONI NJOGU 1ST APPLICANT

PENINAH WANJIKU 2ND APPLICANT

RULING

1. The applicants filed Summons for rectification of grant dated 30th October, 2024 seeking the following orders:
 1. That this honourable court be pleased to rectify the grant in this case in a manner to include deceased shares out of land parcels Nos. Mwerua/Kagio/8922, Mwerua/Kagio/8917, Mwerua/Kagio/8918, Mwerua/Kagio/8919, Mwerua/Kagio/8920, Mwerua/Kagio/8923, Mwerua/Kagio/8924 & Mwerua/Kagio/8925 in the Petition and be distributed as per paragraph 5 of the supporting affidavit.
 2. That cost be in the cause.
2. The Application is grounded upon the annexed affidavit Grace Muthoni Njogu & Peninah Wanjiku attached herewith the nature of cause and other grounds to be adduced at the time of hearing thereof.
3. The application is premised on the grounds on the face of it and supported by an affidavit sworn by the Applicant on even date. She avers that pursuant to the issuance of a confirmed grant on 30/5/2019, the estate property was subsequently subdivided by the County Surveyor and each beneficiary shown their respective portions. On 23/5/2024, the court ordered the lifting of any encumbrances affecting the estate property to enable the implementation of the grant. It has been discovered that the estate property was registered in the name of Alois Simbumbu Murira on 1/9/2017 and a trustee title deed issued to him on 4/9/2017. The said Alois Simbumbu Murira was the original objector in this matter and was substituted by his wife, the 2nd Administratrix herein. The said registration was done



fraudulently on the basis of an alleged succession cause No. 156/2019 which is non-existent and the available file at Meru Probate and Administration registry relates to a different deceased person. In any event, a 2nd succession in respect of the same deceased person could not have been instituted in 2015 while this cause was pending in court. The confirmed grant cannot be implemented without a rectification of the register and cancellation of the said fraudulent title deed.

4. The applicants/ petitioners based their case on their 7 paragraphs supporting affidavit with the following averments:

1. “That this case already finalized and the letters for confirmation of grant issued to the applicants.
2. That after issuance of grant the applicants and other beneficiaries discovered that they omitted deceased shares out of land parcels Nos. Mwerua/Kagio/8922, Mwerua/Kagio/8917, Mwerua/Kagio/8918, Mwerua/Kagio/8919, Mwerua/Kagio/8920, Mwerua/Kagio/8923, Mwerua/Kagio/8924 & Mwerua/Kagio/8925 in the Petition and be distributed as per paragraph 5 of the supporting affidavit.
3. That the applicants and the other beneficiaries have agreed and/or consented that the grant to be rectified to include the deceased shares out of land parcels Nos. Mwerua/Kagio/8922, Mwerua/Kagio/8917, Mwerua/Kagio/8918, Mwerua/Kagio/8919, Mwerua/Kagio/8920, Mwerua/Kagio/8923, Mwerua/Kagio/8924 & Mwerua/Kagio/8925 in the Petition.
4. That the distribution of the above assets be as follows:-

Kirimukuyu/mbogoini/897

Sheila Njambi Michere - Whole Share

Account No.01100XXXXX600 Co-operative Bank-kerugoya

Sheila Njambi Michere - Whole Share

Account No. 00401XXXXX773 Equity Bank-kerugoya

Sheila Njambi Michere - Whole Share

A Share Out of Mwerua/Kagio/8922

Sheila Njambi Michere Whole Share

A Share Out of Mwerua/Kagio/8917

Sheila Njambi Michere Whole Share

A Share Out of Mwerua/Kagio/8918

Sheila Njambi Michere . Whole Share

A Share Out of Mwerua/Kagio/8919

Sheila Njambi Michere Whole Share

A Share Out of Mwerua/Kagio/8920

Sheila Njambi Michere Whole Share

A Share Out of Mwerua/Kagio/8923

Sheila Njambi Michere Whole Share



A Share Out of Mwerua/Kagio/8924
Sheila Njambi Michere Whole Share
A Share Out of Mwerua/Kagio/8925
Sheila Njambi Michere Whole Share.

5. The beneficiaries of the deceased have attached a consent dated 30th October, 2024 to have the grant rectified as per the supporting affidavit.
6. The application is not opposed.
7. On 3rd December, 2024 the court ordered the applicants to avail to court the Green Card relative to the parcels 8917- 8925 to give clear history of the parcels.

Issue

8. The issue for determination in this case is whether the amendment sought by the rectification of grant should be allowed. In the context of this case, the applicant must show that the court has power to make the review sought and that the assets sought to be included belong to the deceased before any attempt at distribution thereof.

Analysis

(a) Jurisdiction

9. The power of the court for 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 provides as follows:

“Errors may be rectified by court:

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) provides as follows:

“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.””

See *In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR.

10. From the wording of these provisions which deal with rectification of grant, it is clear that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased’s death and place of death of the deceased.
11. It is a power to rectify errors relating to names or descriptions, or setting out of the time or place of the deceased’s death in the Grant. The power of rectification is limited ejusdem generis to such errors on the grant. It is not a power of rectify in the broad common parlance acceptation by the man on the Kerugoya bus of the word “rectification” to include wide-ranging changes in the manner, type, size



and heir of assets distributed by a confirmed grant. Unfortunately, this general understanding of the terms is what carries the day in most applications for rectification and the situation is not made better by the fact that in this case the parties are not represented by advocate.

12. As many others in our courts today, the applicants seek to have the Certificate of Confirmation of Grant reviewed and the distribution altered, changed or amended to reflect a new mode of distribution of the estate assets. The Certificate of Confirmation of Grant herein was issued on 9th November, 2015 and it is sought to be amended to include the subject property on grounds that the deceased owned a share of the property which was inadvertently left out during the Estate's distribution.
13. Consequently, the issue of inclusion of Land Parcels Mwerua/Kagio/8917 – 8925 on the ground that they were inadvertently left out of the confirmation application is not a matter of rectification. It is a matter for review of the Grant to include the assets left out and make a distribution of the said assets to the relevant heir(s). The applicants ought to have approached the court for review under Order 44 of the Civil Procedure Rules as was held in the following case.
14. This Court respectfully agree with the Court (Musyoka J.) in *The Estate of Geoffrey Kinuthia Nyamwinda (Deceased)* [2013] KEHC 3745 (KLR) and *In re Estate of Charles Kibe Karanja (deceased)* [2015] eKLR, that the correct procedure for amendment and redistribution of asset of a deceased person after discovery of assets which were not included in the Grant is by way of review and not rectification under section 74 and Rule 43 of the *Probate and Administration Rules*. See also *In the Matter of Estate of Hebron Amunze Ayuka (Deceased)* [2016] eKLR.
15. In the latter decision, *re Estate of Charles Kibe Karanja (deceased)*, the Court admirably examined what errors can be rectified under Section 74 of the Act and Rule 43 of the *Probate and Administration Rules*, and held ss follows:

“If a party wishes to have the assets of the estate redistributed or 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. The remedy of review of Court orders is not directly provided for in the *Law of Succession Act* and the *Probate and Administration Rules*, but it is imported into probate practice by Rule 63 of *Probate and Administration Rules*, which has adopted a number of procedures from the Civil Procedure Rules.....

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. Where assets are discovered after the Court has confirmed the grant or a heir or survivor of the deceased who had previously been unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.....

New assets cannot be introduced and distributed by merely rectifying the certificate of confirmation of grant. That calls for going back to the distribution orders, so as to have



them altered or revised. The applicant ought to have sought a review of the orders of 7th November, 2006 so as to include the discovered assets and to distribute them. It is only after review or revision of the said orders that an altered certificate of confirmation of grant can issue.”

16. In the interests of doing substantial justice in this case, and having regard to the fact that the parties are self-representing without legal counsel of an advocate; there have agreed to the proposed redistribution of the estate following the inclusion of the assets discovered after confirmation of grant, the court would pursuant to its authority under section 47 of the *Law of Succession Act* and Rules 73 of the Probate and Administration deem the application before the court as one for review of the order for the distribution of the estate upon discovery of new fact of the existence of the existence of the assets not included in the Grant and finding that to be sufficient reason for purposes of the law on review of orders under order 44 of the Civil Procedure Rules proceed to grant he application for amendment and distribution of the assets of the deceased including those discovered after the confirmation of the Grant as proposed by the application in the present application. What are these assets? The Court must, however, ascertain that the assets proposed to be included in the grant belong to the deceased and are up for succession by her heirs.

(b) Parcels of land 8917-8925 proposed to be included in the estate of the deceased. Do the assets sought to be included belong to the Deceased?

17. On 30th October, 2024, the Administrators (applicants) swore a supplementary affidavit sworn in support of the present application. Further, as requested by the court, they availed the Green Card relative to the parcels 8917- 8925 to give clear history of the parcels. Under the substantive prayer no. 1 of the present summons application, the Applicants seeks that the land be distributed as per the affidavit annexed thereto.
18. However, as regards, the parcels of land 8917-8925, the Green Card indicates that they having been held on a joint proprietorship, the ownership rights passed to the surviving proprietors and could not be inherited by the heirs of such deceased proprietor. That is the reason why the green Card is marked by entry NO. 2 of 8/2/2019 as follows
- “ 8.2.19 – Death of Sophia Michere Njogu VID C/D No. 144539 of 2.11.2011. Transmission of Death of Joint Prop. SEC. 60 of LRA.”
19. Upon her death the ownership of the parcels of land passed by the doctrine of survivorship (jus accrescendi) to the surviving joint owners. Consequently, the deceased proprietor Sophia Michere Njogu retained no share which her estate could inherit; her unidentified and undivided interest passed to the sisters who survived her.
20. Section 60 of the *LRA* is clear on the right of survivorship by the living joint proprietors as follows: –
- “ 60. Transmission on death of joint proprietor
- If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of the death, delete the name of the deceased tenant from the register by registering the death certificate.”
21. The effect of joint proprietorship is stipulated in section 91(4) as follows:
- “ (4) If land is occupied jointly, no tenant is entitled to any separate share in the land and, consequently—(a)dispositions may be made only by all the joint tenants;



(b) on the death of a joint tenant, that tenant's interest shall vest in the surviving tenant or tenants jointly; and (c) each joint tenant may transfer their interest inter vivos to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void."

22. The existing proprietors can only transfer the joint interest to the daughter of the deceased Sophie and subsequently, upon dissolution of the Trust registered on the title, seek a severance of the joint tenancy so that each gets their undivided share in terms of section 91(7) of the [Land Registration Act](#), as follows:

"(7) Joint tenants, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the jointing ownership and the severance shall be complete by registration in the prescribed register of the joint tenants and tenants in common."

23. As the surviving joint proprietors, who include mother and sister of the deceased Sophia, agree that the deceased Sophia Michere's share may go to her sole daughter upon the transformation of the estate in the plots from joint ownership to ownership in common where each person proprietor of a parcel of land will hold an identified undivided share in the land, which she can sell, which can be inherited by her heirs and which can be severed by the process under section 91(7) of the [Land Registration Act](#) and registered in separate titles for the proprietors.

24. Accordingly, there is further process to be undertaken before the assets may validly be said to contain shares belonging to the deceased's estate the application for review and amendment of the Grant has no basis and it cannot be effected to bring in the plots of land presently registered under a joint proprietorship as the deceased Sophia Micere Njogu has no surviving interest capable of inheritance.

Orders

25. Accordingly, for the reasons set out above, this court finds that the relief sought in the application dated 30th October, 2024 expressed as an application for rectification, which is now deemed to be an application for review, is without merit and it is declined.

26. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 13TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Parties in person.

