



REPUBLIC OF KENYA



**In re Estate of Simon Ndinguri Kiiru (Deceased) (Succession Cause
1457 of 1989) [2025] KEHC 5763 (KLR) (Family) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1457 OF 1989
PM NYAUNDI, J
MAY 9, 2025
IN THE MATTER OF THE ESTATE OF SIMON NDIINGURI KIIRU (DECEASED)
BETWEEN
GEOFFREY MUIRURI MUCHAI 1ST APPLICANT
GABRIEL NJENGA GICHINGA 2ND APPLICANT
AND
GILBERT KIIRU NDIINGURI RESPONDENT**

RULING

1. There are 3 Applications subject of this ruling. The first two, Simon Ndinguri Njambi & Elizabeth Gathoni Njambi, have filed Notice of Motion dated 4th August 2023 and Summons in Protest dated 14th October 2023. The gist of these first two applications is that they are aggrieved by the orders-
 - a. Rectifying the grant to include Geoffrey Muiruri Muchai and Gabriel Njenga Gichinga as beneficiaries, pursuant to consent dated 20th December 2021 and its subsequent adoption by Court on 25th January 2022.
 - b. Lifting the restriction placed on land of Title Number Gatamaiyu/Kagaa/528 and requiring that the District Surveyor Kiambu County carry out the survey process on the said parcel of land and that the parcels of land belonging to Geoffrey Muiruri Muchai and Gabriel Njenga Gichinga be included in the survey process issued on 14th November 2016 (Hon. Achode LJ as she then was) and 21st March 2023 (Hon Odero LJ)
2. The 3rd Application seeks a rectification of the Grant so that the share of Mwaura Ndinguri is adjusted to be a total acreage of five (5) instead of four (4) acres as stated in the grant. This application is not opposed



Background

3. This Succession Cause relates to the estate of Simon Ndinguri Kiiru (hereinafter ‘the Deceased’) who died intestate on 5th November 1988. The current administrator, Gilbert Kiiru Ndinguri, is a son of the deceased, whereas the applicants in the first two applications set out above are the grandchildren to the deceased; nephew and niece to the administrator, their respective mothers having been the daughters of the deceased.; Mary Njambi Ndinguri (Deceased) is the mother of Simon Ndinguri Njambi, while Teresia Kabura Ndinguri (Deceased) is the mother of Elizabeth Gathoni Njambi.
4. The matter has literally crawled through the justice system, with a partial grant with respect to one house (Njeri Ndinguri) being issued on 28th November 1996 (Hon. Githinji J as he then was) and Final grant incorporating 2nd House (Wanjiru Ndinguri) on 3rd March 2015 (Hon. Achode LJ as she then was). This grant was subsequently rectified on 25th January 2022 (Hon. Muchelule J, as he then was)
5. The Applicant, Simon Ndinguri Njambi, is aggrieved that the Administrators have made decisions and taken actions relating to the estate of his mother without reference to him. He argues quite passionately that absent letters of administration, all these transactions are a nullity. The gravamen of his protestations is that the administrators have no locus to enter into consents with Geoffrey Muiruri Muchai and Gabriel Njenga Gichinga both of whom are alleged to have purchased portion of land Parcel No.Gatamaiyu/Kagaa/528from his mother and Aunt who are both deceased.
6. He cites the decision in the case of *Estate of Erman Bundotich Arap Cheptoo (Deceased)* [2022] eKLR. It is his contention that as a grandson of the deceased he should inherit directly from his grandfather.
7. Both parties filed submissions pursuant to the Court’s directions. The submissions were a restatement of the pleadings and affidavits sworn herein and so no need for me to set them out here.

Analysis and Determination

8. Having considered the pleadings herein, submissions filed and relevant law, I discern the following to be the issues for determination-
 - a. Whether the Court should set aside the orders of this Court issued on 25th January 2022 amending the Certificate of Confirmation of Grant?
 - b. Whether the court should vary or vacate the orders of the Court issued on 21st March 2023
 - c. Whether the grant should be rectified so as to allocate Mwaura Ndinguri 5 acres instead of 4 acres out of Gatamaiyu/ Kagaa/528
 - d. Who should pay costs of this suit?
9. On the 1st issue, the Applicant alleges that the amended certificate of confirmation of grant is the culmination of coordinated acts of fraud by the administrators, Geoffrey Muiruri Muchai and Gabriel Njenga Gichinga, with the local administration. Essentially, he is challenging the implementation of the sale agreements executed by Mary Njambi Ndinguri and Teresia Kabura prior to their death. He also challenges the allocation to his mother in particular which he postulates is discriminatory on account of her gender.
10. The grant herein, in relation to the house which he belongs to, was confirmed on 3rd March 2015, pursuant to summons for confirmation of grant dated 30th July 2013. Attached to that Summons was Consent to Mode of Distribution of Estate signed by-



- a. Gilbert Kiiru Ndinguri
 - b. Mary Wairimu Wando
 - c. Jane Wangui Ndinguri
 - d. Paul Komu Karanja (Son of Margaret Njoki Karanja)
 - e. Mary Njambi Ndinguri
 - f. Geoffrey Mwaura Ndinguri
 - g. Ann Njeri Ndinguri (Daughter of Teresia Kabura Ndinguri).
11. Paragraph 7 of the Supporting Affidavit set out the proposed distribution of the Estate which include 2.5 acres each for both Ann Njeri Ndinguri (as daughter of Teresia Kabura Ndinguri) and Mary Njambi Ndinguri (mother of the applicant). We really cannot excavate beyond this point in inquiring into the rightful share of the Mary Njambi Ndinguri (Deceased) in the Estate of her father, the deceased herein. She consented to the proposal, her son has no ground upon which to stand to claim a larger share of his grandfather's estate. He is only entitled to what his parent is entitled to.
 12. The Secondary issue now is whether the Administrator can be faulted in factoring in the interests of the purchaser in the estate of Simon Ndinguri Kiiru the deceased herein. In accommodating the interests of Gabriel Njenga Gichinga, the administrator relied on the order issued by the Court on 3rd November 2008 (Hon. Rawal LJ as she then was). The challenge by Elizabeth Gathoni Kabura therefore must fail.
 13. There is an agreement dated 20th December 2005, executed by Gilbert Ndingiru, Mary Wairimu Wando, Jane Wangui Ndingiru, Mary Njambi Ndingiru, Paul Komu Karanja, Mwaura Ndinguri, Winnie Wangui Ndingiru daughter of Teresia Kabura Ndinguri, Gabriel Njenga Gichinga and Geoffrey Muiruri Muchai acknowledging the Sale of land by Mary Njambi Ndinguri to Geoffrey Muiruri Muchai (1 and ¼ acres to be excised from her share of 2.5 acres out of Gatamaiyu/ Kagua/ 528. Again, our excavation hits the hard rock at this point and we must halt it there.
 14. Having reviewed the Court record I am satisfied that prior to the issuance of the grant herein the deceased mother of the applicant disposed a portion of her entitlement of the estate of the deceased by sale to Geoffrey Muiruri Muchai. This transaction is well documented. The same has already been validated by a court of concurrent jurisdiction, I cannot sit on appeal on the decision of that Court.
 15. What is left as the entitlement of his deceased mother in the estate of his grandfather is the ¾ acre as set out in the Certificate of Confirmation of Grant. The option left for him is to take out letters of administration with respect to the estate of his deceased mother and then move to administer her portion of the estate of the deceased herein, Simon Ndinguri Kiiru.
 16. With regard to the 2nd issue; the orders of 26th March 1996 were issued as interim orders (By Rawal J as she then was) pending determination of the summons of revocation dated 26th April 1996. The decision was rendered on 28th November 1996, partially confirming the grant and a final grant issued on 3rd March 2015. The two orders necessarily vacated the order of 26th March 1996. The applications to vacate the orders are therefore a formality, aimed at giving effect to the Court's pronouncement on distribution of the estate.



17. On the 3rd issue, the applicant therein seeks that the Court rectify the grant to alter the acreage that will be transmitted to a beneficiary. Section 74 of the [Law of Succession Act](#) provides for the errors on grants of representation that may be rectified by the court. It provides: -

“Errors in names and descriptions or in setting out 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”.

18. The procedure for seeking the relief is set out in Rule 43 (1), which echoes Section 74 of the [Law of Succession Act](#):-

“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 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.....”

19. Thus, rectification of grant of letters of administration is limited to matters set out in section 74 of the [Law of Succession Act](#). These matters specifically refer to corrections of error which the court may order without changing the substance of the grant. These include errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of persons or things.

20. The issue of the mandate of the Court to rectify a grant has been addressed in various decisions in the High Court which I have considered here as persuasive authorities.

[In the matter of the Estate of Hasalon Mwangi Kabero](#) [2013] eKLR

An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error? It would be an error if say, a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.

21. Similarly, in [In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga \(Deceased\)](#) [2013] eKLR: -

The law on rectification or alteration of grants is Section 74 of the [Law of Succession Act](#) and Rule 43 of the [Probate and Administration Rules](#)....What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general....

Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the [Law of Succession Act](#), the applicant ought to approach the court under order 44 of the [Civil Procedure Rules](#). A review under Order 44 of the [Civil Procedure Rules](#) may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in



this case should have moved the court under this Provision-Order 44 of the *Civil Procedure Rules* on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.

22. The applicants seek to have the grant rectified to indicate that Mwaura Ndinguri is entitled to 5 acres and not 4 acres. I have perused the application dated 13th December 2023 and the annexures. It has not been spelt out with clarity what error the court made. I have in particular considered the Affidavit sworn on 30th July 2013 in support of the confirmation of Grant and it is not evident to me how the Confirmed Grant differed from the proposal. For this reason, the application dated 13th December 2023 is disallowed.
23. In conclusion, for the foregoing reasons, all the applications herein are dismissed. Each party will bear their own costs

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 9th DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Kirwa holding brief for M/s Cherop for 1st and 2nd Respondent

Simon present in person

Wachira holding brief for Administrators

Fardosa Court Assistant

