



In re Estate of Milka Mumbi Wamboe (Deceased) (Succession Cause 63 of 2006) [2024] KEHC 2770 (KLR) (20 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 63 OF 2006
SM MOHOCHI, SM MOHOCHI & SM MOHOCHI, JJ
FEBRUARY 20, 2024**

IN THE MATTER OF

**ISABELL WANGECI WAMBOE 1ST APPLICANT
ISABELL WANGECI WAMBOE 2ND APPLICANT
ISABELL WANGECI WAMBOE 3RD APPLICANT
PENNINAH WANGARE WAMBOE 4TH APPLICANT
PENNINAH WANGARE WAMBOE 5TH APPLICANT
PENNINAH WANGARE WAMBOE 6TH APPLICANT**

RULING

1. Before me is a Summons for rectification dated 18th April 2023 filed pursuant to rule 49, 59 and 73 of the *Probate and Administration rules* and section 74 of the *Probate and Succession Act* cap 160 Laws of Kenya and all other enabling provisions of the law by the Administrators of the estate of the above-named Milka Mumbi Wamboe who died on the 21st August 2005, seeking the following reliefs:
 - i. That Certificate of Confirmation of Grant issued by this Honorable Court on the 14th July 2006 be reviewed and set aside;
 - ii. That this Honourable Court does issue a new certificate of confirmation of Grant indicating the correct description of the Properties comprising the Deceased's estate and the distribution of the estate as agreed between the Administrators and beneficiaries.
 - iii. That, the costs of this application be provided for.
2. The Application was supported by a sworn affidavit of Isabell Wangeci Wamboe and Penninah Wangare Wamboe the Administrators and is premised on the following grounds;



- i. The deceased died on 21st August 2005 together with her husband, the late William Wamboe Julius and both estates undertook succession proceedings with the latter's being, High Court at Nakuru Succession Cause 58 of 2006 In the Matter of the Estate of William Wamboe Julius Ndirangu
 - ii. The deceased held some properties jointly with her late husband, the Late William Wamboe Julius Ndirangu, and section 43 of the Law of Succession Act cap 160 provides that on the presumption of survivorship where two or more persons have died in circumstances rendering it uncertain.
 - iii. Which of them survived the other or others, the deaths shall, for all purposes of the Act, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.
 - iv. As such all properties held jointly are presumed to have been left to the wife, Milka Mumbi Wamboe and as such the administrators together with the beneficiaries have mutually agreed to apply for review of the Certificate of Grant dated 14th July 2006 to adapt to the presumption of survivorship and as such wish to distribute the assets of the deceased in line with the attached proposed schedule of distribution.
 - v. The Certificate of Confirmation of Grant dated 14th July 2006 contains errors in descriptions of some of the properties of the deceased and such errors may be rectified by the court whether before or after confirmation of the grant and amended accordingly and these fundamental errors with respect to the assets of the Deceased can only be cured by making an Application for Review of the orders to rectify the said errors.
 - vi. The erroneous description of the name and assets in the Schedule of Distribution of the Assets of the Deceased and the resultant error in the Certificate of Confirmation of Grant is vital as it has resulted in unwarranted hardship and delay in the distribution of assets.
 - vii. No application for provision for dependants is pending.
 - viii. All beneficiaries are in agreement that the said grant be rectified and the property divided in terms of the proposed mode of distribution annexed hereto.
3. This Court had directed that the Application was to be heard and determined on the basis of filed pleadings of which the Applicant complied with and filed his supplementary affidavit on the 17th November 2023.

Applicants Case

4. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the beneficiary of an asset of the deceased namely land parcel Nakuru Municipality Block 2/156 as Penninah Wangare Wamboe in whole instead of being shared in equal shares amongst Isabell Wangeci Wamboe, Penninah Wangare Wamboe, Julius Ndirangu Wamboe, Joan Wambui Wamboe and Mary Wanjiru Wamboe.
5. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the beneficiary of an asset of the deceased namely land parcel Nakuru Municipality Block 2/333 as Mary Wanjiru Wamboe and Joan Wambui Wamboe in equal shares instead of being shared in equal shares amongst Isabell Wangeci Wamboe, Penninah Wangare Wamboe Julius Ndirangu Wamboe and Joan Wambui Wamboe.



6. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the beneficiary of an asset of the deceased namely land parcel No Nakuru Municipality Block 2/155 as Penninah Wangare Wamboe in whole instead of being shared in equal shares amongst Isabel Wangeci Wamboe, Penninah Wangare Wamboe, Julius Ndirangu Wamboe. Joan Wambui Wamboe and Mary Wanjiru Wamboe.
7. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the description of an asset of the deceased, erroneously indicated as Nakuru Municipality LR No 8624 to be rectified and indicated as Land Reference Number 8624 to allow the smooth and successful distribution of the Estate of the Deceased to the rightful beneficiaries.
8. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the beneficiary of an asset of the deceased namely land parcel Land Reference Number 8624 as Penninah Wangare Wamboe with 0.64 acres and Joan Wambui Wamboe with 8 acres instead of being shared in equal shares amongst Isabel Wangeci Wamboe, Penninah Wangare Wamboe, Julius Ndirangu Wamboe, Joan Wambui Wamboe and Mary Wanjiru Wamboe.
9. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the description of an asset of the deceased, erroneously indicated as Nakuru Municipality LR No 11098/73 to be rectified and indicated as Land Reference Number 11098/73 to allow the smooth and successful distribution of the Estate of the Deceased to the rightful beneficiaries.
10. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the beneficiary of an asset of the deceased namely. Land Reference Number 11098/73 as Mary Wanjiru Wamboe in whole instead of Isabel Wangeci Wamboe to allow the smooth and successful distribution of the Estate of the Deceased to the rightful beneficiaries.
11. That the order made on the 14th July 2006 as to the confirmation of grant be reviewed to rectify the beneficiary of an asset of the deceased namely land parcel Nakuru Municipality Block 3/503 as Isabell Wangeci Wamboe and Julius Ndirangu Wamboe in equal shares instead of being shared in equal shares amongst Isabell Wangeci Wamboe, Penninah Wangare Wamboe Julius Ndirangu Wamboe Joan Wambui Wamboe and Mary Wanjiru Wamboe.

Analysis and Disposition

12. This Court has upon reading the entire summons for rectification dated 18th April 2023 together with the sworn joint affidavit of Isabell Wangeci Wamboe and Penninah Wangare Wamboe and upon hearing Mr Mwenda Advocate, it is my finding that the Applicants has persuaded this court that they deserve the exercise of its discretion in this application.
13. The Motion is without contest consequently, I find merit in this Application dated 29th August 2022 and accordingly allow the same on the following term;

Rectification is hereby done as follows;

- i. The beneficiary of an asset of the deceased namely land parcel Nakuru Municipality Block 2/156 as Penninah Wangare Wamboe in whole instead of being shared in equal shares amongst Isabell Wangeci Wamboe, Penninah Wangare Wamboe, Julius Ndirangu Wamboe, Joan Wambui Wamboe and Mary Wanjiru Wamboe.
- ii. The beneficiary of an asset of the deceased namely land parcel Nakuru Municipality Block 2/333 as Mary Wanjiru Wamboe and Joan Wambui Wamboe in equal shares instead of being



shared in equal shares amongst Isabell Wangeci Wamboe, Penninah Wangare Wamboe Julius Ndirangu Wamboe and Joan Wambui Wamboe.

- iii. The beneficiary of an asset of the deceased namely land parcel Nakuru Municipality Block 2/155 as Penninah Wangare Wamboe in whole instead of being shared in equal shares amongst Isabel Wangeci Wamboe, Penninah Wangare Wamboe, Julius Ndirangu Wamboe, Joan Wambui Wamboe and Mary Wanjiru Wamboe.
 - iv. The description of an asset of the deceased, erroneously indicated as Nakuru Municipality LR No 8624 to be rectified and indicated as Land Reference Number 8624.
 - v. The beneficiary of an asset of the deceased namely land parcel Land Reference Number 8624 as Penninah Wangare Wamboe with 0.64 acres and Joan Wambui Wamboe with 8 acres instead of being shared in equal shares amongst Isabel Wangeci Wamboe, Penninah Wangare Wamboe, Julius Ndirangu Wamboe, Joan Wambui Wamboe and Mary Wanjiru Wamboe.
 - vi. The description of an asset of the deceased, erroneously indicated as Nakuru Municipality LR No 11098/73 to be rectified and indicated as Land Reference Number 11098/73
 - vii. The beneficiary of an asset of the deceased namely. Land Reference Number 11098/73 as Mary Wanjiru Wamboe in whole instead of Isabel Wangeci Wamboe.
 - viii. The beneficiary of an asset of the deceased namely land parcel Nakuru Municipality Block 3/503 as Isabell Wangeci Wamboe and Julius Ndirangu Wamboe in equal shares instead of being shared in equal shares amongst Isabell Wangeci Wamboe, Penninah Wangare Wamboe Julius Ndirangu Wamboe Joan Wambui Wamboe and Mary Wanjiru Wamboe.
14. The Administrators are to file a return on distribution and settlement of the estate within the next six (6) months from the date of this ruling.
 15. Mention to confirm conclusion of the distributions shall be on the 20th August 2024.
 16. This being a family matter there shall be no Order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU
ON THIS DAY OF 20TH DAY OF FEBRUARY, 2024.**

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**S. MOHOCHI
JUDGE**

