



REPUBLIC OF KENYA



**In re Estate of Karanja Matheri (Deceased) (Miscellaneous Succession Cause E012 of 2023) [2024] KEHC 2688 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2688 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS SUCCESSION CAUSE E012 OF 2023  
GL NZIOKA, J  
FEBRUARY 14, 2024  
IN RE ESTATE OF KARANJA MATHERI (DECEASED)**

**IN THE MATTER OF**

**EVANS MUCHIRI KARANJA ..... APPLICANT**

**RULING**

1. By a notice of motion application dated, 8<sup>th</sup> September 2023 and filed in court on 20<sup>th</sup> September 2023, the applicant is seeking for orders that the orders of Honourable J. Ndengeri, Principal Magistrate, issued *vide* CMCC succession cause No. E361 of 2021 dismissing the application dated, 5<sup>th</sup> September 2023, be set aside or vacated.
2. The application is based on the grounds that, the learned trial magistrate erred in disregarding Rule 63 of the *Probate and Administration Rules*, which provides a leeway to accommodate property left out of the grant.
3. Further, the court erred by dismissing the application using provisions of the law which was not grounded on the face of the application and failed to give the applicant a proper chance to prosecute the application.
4. The application is further supported by an affidavit of the applicant, Evans Muchiri Karanja, in which he reiterates the grounds in support of the application. Finally, the applicant argues that no prejudice will be suffered by any party if the orders sought are granted.
5. The application is further premised on a document entitled Summons for Review/Amendment of Confirmed Grant citing Rule 63 of the *Probate and Administration Rules*, wherein, the applicant seeks that, the confirmation of Grant of Administration issued in the matter herein be rectified to include property L.R. No. Karai/Gikambura T.49 "A" which was omitted or forgotten when the parties filed the list of the assets of the deceased.



6. That upon inclusion of the subject property, the same be allocated to Evanson Muchiri Karanja, the Administrator of the Estate.
7. Further, availed is an affidavit in support of the application filed in the Chief Magistrate's Court Succession No. E361 of 2021; which shows the beneficiaries and assets of the Estate, a consent signed by all beneficiaries in support of the application for review, and a search certificate relating to; L.R. Karai/Gikambura T.49.
8. At the hearing of the application, the court noted that all beneficiaries of the estate of the deceased were in court and supported the grant of orders sought for herein.
9. I have considered the application in light of the materials placed before the court and in particular, the impugned ruling dated, 5<sup>th</sup> September 2023, note the learned trial Magistrate stated as follows: -

“The rectification sought by the petitioner is not supported by the law.

Section 76 and 43 of the *Succession Act* do not envisage a situation where the grant shall be rectified to include property that had been omitted. Consequently, the application dated 5<sup>th</sup> May 2023 stands dismissed.”

10. I note that, the provisions of section 76 of the *Law of Succession Act* (Cap 160) of the Laws of Kenya, (herein “the Act”) deal with revocation or annulment of grant and states as follows: -

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.



11. The provisions of section 43 of the Act on the other part deal with presumption of survivorship and states as follows: -

“Where two more persons have died in circumstances rendering it uncertain which of them survived the other or others, the deaths shall, for all purposes of this Act, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder:

Provided that, in the case of spouses who died in those circumstances, the spouses shall be presumed to have died simultaneously.

12. Be that, as it may, the provisions of section 74 of the Act states as follows:

“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”.

13. It suffices to note that, as already stated that the subject application before the trial court dated; 5<sup>th</sup> May 2023 was seeking that the “confirmation of grant” issued by the court be “reviewed and/or amended” so as to include L.R. Karai/Gikambura T.49 which property had been left out of the confirmed grant.

14. The subject application was premised on Rule 63 of the [Probate and Administration Rules](#), which provides:

“(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the [Civil Procedure Rules](#), namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.

(2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.

15. Indeed, there is no substantive provision in the Act that provides for review of an order of confirmation of grant and that is why Rule 63 of the [Probate and Administration Rules](#), comes into play and imports Order 45 of the [Civil Procedure Rules](#) 2010.

16. In relation to the afore Rule, court in the case of; In re estate of [Charles Kibe Karanja](#) (Deceased) [2015] eKLR stated as follows:

“22. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. 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 effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.

23. 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. Among the imported procedures is the device of review under the *Civil Procedure Rules*. In the relevant rules on review under the *Civil Procedure Rules*, an order of the court can be revised on the grounds of an error on the face or the record or discovery of new and important evidence that was not available at the time of the making of the order sought to be reviewed or for any other sufficient reason.
24. 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 heir or survivor of the deceased who had previously been previously 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.” (See also; *Matter of the Estate Of Geoffrey Kinuthia Nyamwinga (Deceased)* [2013] eKLR Musyoka, J stated that:

17. I entirely concur with the sentiments of the court in the afore case.
18. I have considered the application dated 5<sup>th</sup> May, 2023 before the trial court, I note the applicant sought for review, under Rule 63 of the *Probate and Administration Rules*. The trial court in its finding did not consider that Rule.
19. Therefore, I hold that the learned trial Magistrate erred in holding that there are no provisions to address the subject matter before it, and set aside, the orders of the trial court dated 5<sup>th</sup> September, 2023.
20. Consequently, prayer (1) of the application is allowed as prayed. The matter is remitted back to the trial court for consideration.
21. It is so ordered.

**Dated, delivered and signed this 14<sup>th</sup> day of February, 2024.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

The applicant present, virtually



Ms. Ogutu: Court Assistant

