



**In re Estate of Samwel Muiruri Nganga (Succession Cause
88 of 2013) [2024] KEHC 4589 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 88 OF 2013
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

ZIPPORAH NJOKI MUIRURI APPLICANT

AND

CHARLES MBUGUA MUIRURI RESPONDENT

RULING

1. What is pending before this court is the Summons for Rectification of grant dated 29th May 2023. The Petitioner seeks the following orders;
 - a) That the grant of letters of administration made to Zipporah Njoki Muiruri in this matter on the 18th April, 2016 be and is hereby amended/rectified.
 - b) That Costs of this application be in the cause.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of the same.

Applicant's case

3. It is the Petitioner's case that a Certificate of Confirmed Grant of the said estate was made to Zipporah Njoki Muiruri in this cause on the 18th April, 2016. The deceased was survived by the following;
 1. Zipporah Njoki Muiruri - Widow
 2. Mary Kaheto - Daughter
 3. Elizabeth Wambui Muiruri - Daughter (Deceased)
 4. James Nganga Muiruri - Son



5. Peter Muchiri Muiruri - Son
 6. Geofrey Kamau Muiruri - Son
 7. Juliah Wangare Muiruri - Daughter
 8. Charles Mbugua Muiruri - Son
 9. George Njenga Muiruri - Son
4. Further, that there is no application for provision of dependants pending and that the certificate of confirmation of grant gave everything under her name. She prayed that the grant be rectified and the properties of the deceased be redistributed.

The applicant urged that the properties and assets of the deceased be distributed as follows;

a. Olare/Burnt Forest Block 2/223 Measuring 1.940 HA.

- i. Mary Kaheto - ½ an acre
- ii. James Nganga Muiruri - ½ an acre
- iii. Peter Muchiri Muiruri - ½ an acre
- iv. Geofrey Kamau Muiruri - ½ an acre
- v. Juliah Wangare Muiruri - ½ an acre
- vi. Charles Mbugua Muiruri - ½ an acre
- vii. George Njenga Muiruri - ½ an acre

b. Nyandarua/Njabin1/1435 Measuring 1.72 HA.

- i. Mary Kaheto - ½ an acre
- ii. James Nganga Muiruri - ½ an acre
- iii. Peter Muchiri Muiruri - ½ an acre
- iv. Geofrey Kamau Muiruri - ½ an acre
- v. Juliahwangare Muiruri - ½ an acre
- vi. Charles Mbugua Muiruri - ½ an acre
- vii. George Njenga Muiruri - ½ an acre
- viii. Elizabeth Wambui Muiruri - 1 acre

c. Plot at Munyaka

Zipporah Njoki Muiruri - Whole

d. East Africa Breweries Shares

Zipporah Njoki Muiruri - Whole

e. Retirement Benefits (Monthly Pension)

Zipporah Njoki Muiruri - Whole



The applicant prayed the application be allowed as prayed.

Objector's case

5. The objector opposed the application vide a replying affidavit dated 25th September 2023. He stated that the identification of assets and shares of all persons beneficially entitled to the said estate are as follows:-
- a. Olare/Burnt Forest Block 2/223 measuring 1.940HA
 - b. Nyandarua /Njabini/ 1435 measuring 1.72HA
 - c. Plot at Munyaka
 - d. East Africa Breweries
 - e. Retirement Benefits (monthly pension)
 - f. Burnt Forest Plot No. 105.
 - g. Uikaro Plot No. 105
 - h. KCB shares in A/C No 000XXXX75 for certificate No.59XXX3 (total number of shares being 5,330) and certificate No.609542.
6. Further, that in identification of assets and shares of all persons beneficially entitled to the estate of the deceased have been ascertained and his proposed fair and equitable mode of distribution is as follows:

Olaré/Burnt Forest Block 2/23 measuring 1.940 HA

- i. Mary Kaheto 1/2 an acre
- ii. James Nganga Muiruri 1/2 an acre
- iii. Peter Muchiri Muiruri 1/2 an acre
- iv. Geoffrey Kamau Muiruri 1/2 an acre
- v. Juliah Wangare Muiruri 1/2 an acre
- vi. Charles Mbugua Muiruri 1/2 an acre
- vii. George Njenga Muiruri 1/2 an acre

Nyandarua /Njabini/1435 measuring 1.72HA

- i. Mary Kaheto 1/2 an acre
- ii. James Nganga Muiruri 1/2 an acre
- iii. Peter Muchiri Muiruri 1/2 an acre
- iv. Geoffrey Kamau Muiruri 1/2 an acre
- v. Juliah Wangare Muiruri 1/2 an acre
- vi. Charles Mbugua Muiruri 1/2 an acre
- vii. George Njenga Muiruri 1/2 an acre



viii. Elizabeth Wambui Muiruri 1 acre
Plot at Munyaka measuring 50 by 80

i. Juliah Wangare Muiruri and Charles Mbugua Muiruri to share equally.
East Africa Breweries shares

i. All shares to go to Zipporah Njoki Muiruri
Retirement Benefits (monthly pension)

i. All shares to go to Zipporah Njoki Muiruri
Burnt Forest Plot No. 105.

i. Be shared equally between ,James Nganga Muiruri ,Peter Muchiri Muiruri ,Geoffrey
Kamau Muiruri and George Njenga Muiruri

Uikaro Plot No. 106 -plot at Lochab

i. Whole plot to registered in the name of Mary Kaheto
KCB shares in A/C No 000XXXX75 for certificate No.592XXX (total number of shares being 5.990)
and certificate No.609XXX

1. Peter Muchiri to get 1,256.75 shares

7. The remainder of the shares to be shared equally among all the beneficiaries to the estate of the deceased.

8. The objector deponed that documents for Burnt Forest Plot No. 105, Uikaro Plot No. 106 and KCB shares in A/C No 000XXXX75 for certificate No.59XXX3 (total number of shares being 5,330) and certificate No.60XXX2 got burnt during the post violence election and the petitioner instead of following the correct procedure, illegally caused direct registration of Burnt forest Plot No. 105 into her names and obtained title in her name now, Uikaro plot No. 106 ,she is pursuing title processing into her names.

9. He stated that there existed a sale agreement from Francis Ndungu Wainaina confirming that he sold the burnt forest plot to the deceased however the said sale agreement got burnt during post-election violence and the very Francis Ndungu Wainaina has an sworn an affidavit to that effect. Further, that family minutes held on 23.1.2021 and in particular clause 7 and 10 of the said minutes makes reference to plots in Munyaka, Burnt Forest ,Lochab and KCB shares which have been included in the petitioner's summons for rectification for ulterior motives. Additionally, that Mary Kaheto, James Nganga Muiruri, Peter Muchiri Muiruri, Geoffrey Kamau Muiruri, Juliah Wangare Muiruri, Charles Mbugua Muiruri and George Njenga Muiruri are all dependants to the deceased estate and are entitled to equal protection and benefit to the deceased estate.

10. It is the objectors' position that his proposal has taken into account the assets available and the issues for determination in this cause is now limited to how the deceased estate should be distributed and which of the two proposals made by the petitioner and the one made by the objector would ensure fair and equitable distribution amongst the beneficiaries to the deceased estate. He posited that the Petitioner is not concerned about fair and equitable distribution of the estate of the deceased.

Analysis & Determination

11. Upon considering the application, the following issue arises for determination;



1. Whether the application for rectification of grant is merited

12. Rectification of grants is governed 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:

74. 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.”

13. From the provisions of section 74 of the [Law of Succession Act](#) and Rule 43(1) of the [Probate and Administration Rules](#), the scope of rectification of grants of representation is limited to 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.

14. The applicant, who is the administrator of the estate seeks a rectification of the confirmed grant to the extent that the properties of the deceased be redistributed as the grant had placed all the properties under her name. From the provisions of section 74 of the [Succession Act](#) and Rule 43(1) of the [Probate and Administration Rules](#), it is my considered view that the corrections that the applicant seeks to effect cannot be done under rectification as they alter the substance of the grant.

15. I am guided by the case of [In the matter of the estate of Geoffrey Kinuthia Nyamwinda \(deceased\)](#) [2013] eKLR where the court stated;

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 of 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.....

16. It follows that an application for rectification of grant which seeks to alter the mode of distribution cannot succeed in the circumstances. As the administrator of the estate, the applicant has the powers to distribute the estate as she wishes and therefore, the present application is not necessary for her to reallocate the estate of the deceased as proposed.

17. The application is dismissed. Each party shall bear its own costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF APRIL 2024

.....

R. NYAKUNDI



JUDGE

