



**In re Estate of Njeru Muruambuci (Deceased) (Civil Appeal
26 of 2019) [2024] KEHC 5715 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL 26 OF 2019**

LM NJUGUNA, J

MAY 22, 2024

**IN THE MATTER OF THE ESTATE OF NJERU MURUAMBUCI
(DECEASED)**

BETWEEN

MWANIKI MURANGIRI (DECEASED) APPELLANT

AND

NDWIGA MURANGIRI MURUAMBUCI (DECEASED) 1ST RESPONDENT

SELESTE MBOGO NJERU 2ND RESPONDENT

AND

FREDRICK NJIRU MWANIKI APPLICANT

RULING

1. The applicant filed summons for rectification of grant dated 11th December 2023 premised on the grounds on its face and in the supporting affidavit thereof. The orders sought are as follows:
 1. That the name of the administrator Mwaniki Murangiri be deleted and substituted with that of the applicant;
 2. That the name of Mwaniki Murangiri in the schedule of distribution as a beneficiary of 1.72 Acres out of land parcel number Gatari/Nembure/1435 and 0.643 Acres out of Gatari/Nembure/4098 be deleted and substituted with the name of the applicant;
 3. That parcel number Gatari/Nembure/1435 which comes second in the distribution be rectified to be Gatari/Nembure/4098; and
 4. The costs of this application be in the cause.



2. The applicant deposed that the administrator of the estate of the deceased, Mwaniki Murangiri died on 12th June 2023 before distributing the estate. That the applicant has taken out a grant ad litem in the estate of the late Mwaniki Murangiri and would like to substitute him in the administration of the estate of the deceased herein and as a beneficiary. He also stated that on the certificate of confirmation of grant parcel number Gaturi/Nembure/4098 is wrongly indicated as Gaturi/Nembure/1435 and that the error should be rectified.
3. The 2nd respondent opposed the application through a replying affidavit in which he stated that the application is misconceived, bad in law and an abuse of the court process.
4. The court directed the parties to file their written submissions but only the applicant complied.
5. The applicant submitted that the administrator of the estate of the deceased was his father who died before distributing the estate. That he has since obtained a grant ad litem purposely to enable him substitute his father as administrator and beneficiary. That if he substitutes the deceased as a beneficiary, the rights of the other beneficiaries will not be affected. That the error on the face of the certificate of confirmation of grant where the identities of the properties have been interchanged should also be corrected through this application. He relied on the provisions of section 74 of the [Law of Succession Act](#) which provides for rectification of a grant and Rule 43 of the [Probate and Administration Rules](#).
6. The issue arising for determination is whether this court can grant the orders sought by the applicant under the head of rectification of the certificate of confirmation of grant.
7. Rectification of a grant, before or after confirmation is provided for in the law as follows:

Section 74 of the [Law of Succession Act](#) 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.

Rule 43(1) of the [Probate and Administration Rules](#) provides:

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 the 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.

It is clear that rectification of a grant can only be done by the issuing court in a very limited manner that does not go to the substance of the distribution itself. (see the case of [Geoffrey Kinuthia Nyamwinga \(deceased\)](#) (2013) eKLR)

8. The applicant has taken out a grant ad litem issued on 30th November 2023 in the estate of his father Mwaniki Murangiri who died on 12th June 2023 and who was administrator of the estate of the deceased herein. The purpose of the grant is to substitute his father as administrator and beneficiary of the estate of the deceased. He has also produced his father's copy of death certificate to prove that he died. The applicant has also sought to rectify the title numbers as indicated on the certificate of confirmation of grant.
9. However, the applicant is not the only child of the deceased and, at the very least, he has not stated how his late father's portion of the estate will be distributed amongst the beneficiaries, him included.



It would be unfair to allow the applicant to benefit solely from the portion of estate of the deceased to be inherited by his father, only by virtue of the fact that he has taken out a grant in his father's estate.

10. From perusing the judgment of this court delivered on 18th March 2021, the court distributed the property in paragraph 20 therein giving each of the beneficiaries 1.72 acres in parcel number Gaturi/Nembure/1435 and 0.643 acres in Gaturi/Nembure/4098. However, the certificate of confirmation of grant omits parcel number Gaturi/Nembure/4098 and erroneously indicates Gaturi/Nembure/1435. This is an error that can be corrected through this application. However, for the reasons given in the previous paragraphs, the certificate of confirmation of grant may only be rectified at such time as the distribution of the portion of the estate that belongs to the late father of the applicant is defined.
11. Therefore, I find that the application lacks merit and the same is hereby struck out.
12. It is so ordered

DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF MAY, 2024.

L. NJUGUNA

JUDGE

..... for the Appellant/Applicant (Deceased)

..... for the 1s Respondent (Deceased)

..... for the 2nd Respondent

and

..... for the Applicant

