



**In re Estate of Esther Wangui Chege (Deceased) (Succession Cause
56 of 2015) [2024] KEHC 5439 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5439 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
SUCCESSION CAUSE 56 OF 2015
GL NZIOKA, J
MAY 3, 2024**

IN THE MATTER OF THE ESTATE OF ESTHER WANGUI CHEGE (DECEASED)

IN THE MATTER OF

**JOHN CHEGE KOMBO 1ST APPLICANT
JOHN NJENGA MBAARA 2ND APPLICANT
TAABU MZEE MOHAMED 3RD APPLICANT**

RULING

1. By a summons of rectification of grant dated 24th October 2023, the applicants are seeking for prayers that: -
 - a. This honourable court be pleased to re-open the file herein to enable the application be heard and determined.
 - b. The grant of Letters of Administration Intestate issued to John Chege Kombo, John Njenga Mbaara and Taabu Mzee Mohamed in this matter on the 28th day of September 2021 and confirmed on the 27th March 2023 be rectified in the following respects:
 - i. That 6700 shares in Safaricom Ltd and dividends due on the same to the Estate be added to the list of assets.
 - ii. That the 6700 shares in Safaricom Ltd as well as the dividends due to the Estate be distributed as follows:
 1. John Chege Kombo – a portion of 25% to hold for himself and for Esther Wangui Kinyanjui, niece, and Hannah Wanjuku Nyoro.
 2. John Njenga Mbaara – a portion of 50%
 3. Taabu Mzee Mohamed – a portion of 25%



- c. The costs of and incidental to this application be in the cause.
2. The application is supported by an affidavit sworn by John Chege Kombo, John Njenga Mbaara and Taabu Mzee Mohamed being the administrators of the Estate of the deceased. The dependents aver that, they discovered the subject property herein after the Letters of Administration Intestate had been issued.
 3. The court considered the application and called for appearance of all the beneficiaries who appeared in court on 19th March 2024 and confirmed that, they have no objection to the grant of the orders sought.
 4. I have considered the application and I note that, the applicants seek for rectification of the grant of Letters of Administration Intestate issued to them and confirmed on 27th March, 2023. The application is premised on provisions of section 1A, 1B, 3 and 3A of the Civil Procedure Rules, section 71(3) of the Law of Succession Act, Rules 40, 47 and 49 of the Probate and Administration Rules.
 5. The provisions of section 71 (3) of the Law of Succession Act states:
 - (3) The court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if it is satisfied-
 - (a) that there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;
 - (b) that it would be expedient in all the circumstances of the case so to direct.
 6. Pursuant t the afore provisions they do not relate to rectification of grant, but confirmation thereof. The provisions of section 74 of the Act states:

“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.”
 7. As can be seen from both provisons, they do not provide for rectification of a confirmed grant. In that regard, it suffices to note that, Rule 63 of the Probate and Administration Rules comes into play. It states as follows:
 - “(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.”



8. The subject rule imports Order 45 of the Civil Procedure Rules into the matter. As stated in 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:

9. From the afore, the applicants should have sought for review of the confirmation order, not rectification of the certificate of confirmation of grant.

10. It follows that from the way the application is framed the court cannot allow it. I direct that, in the interest of justice, the applicant amend the subject application so that, the court can consider the same. It will not be in the interest of justice to strike out or dismiss the application and leave the matter unresolved. I direct that the amended application be filed within seven (7) days or less of the order of this court.

11. It is so ordered.



DATED, DELIVERED AND SIGNED THIS 3RD DAY OF MAY, 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:-

NA for the applicants

Ms. Ogutu: Court Assistant

