



REPUBLIC OF KENYA



**In re Estate of Michael Muhiu Githinji (Deceased) (Succession Cause
184 of 2015) [2024] KEHC 8265 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 184 OF 2015**

MA ODERO, J

JULY 4, 2024

IN THE MATTER OF THE ESTATE OF MICHAEL MUHIU GITHINJI (DECEASED)

RULING

1. Before this court for determination is the Summons for rectification of Grant dated 14th July, 2023 by which the Applicant Julius Waigumi Muhiu seeks the following orders:-
 - “ 1. That the honourable court do rectify the grant issued in the cause to reflect that the sole beneficiary of the estate property named as LR Iriani Kaguyu 1100 is Julius Waigumi Muhiu.
 2. That the title issued in the names Julius Waiguni Muhiu, Phoebe Wangechi Mugwe, Chrisitne Wacuka Waigumi, Kelvin Mwangi Waigumi, Maureen Nyambura Waigumi and Michael Justus Muhiu Waigumi on 9th May, 2022 be recalled and cancelled to be replaced with one in favour of the applicant Julius Waigumi Muhiu.
 3. The administrators herein be ordered to execute land transfer by transmissions from for LR Iriani/ Kaguyu 1100 in favour of the applicant and in default the same be executed by the Deputy Registrar of the honourable court.
 4. Cost of this application be provided for.”
2. The application which was premised upon Rule 43(1) of the *Probate and Administration Rules* and all other enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The application for rectification was opposed by Phoebe Wangechi Mugwe (Interested party) a wife to the Applicant who filed a Replying Affidavit dated 17th August, 2023. The 2nd Administrator Esther Wanjiru Muhiu also opposed the summons through her Replying Affidavit also dated 17th August, 2023.



4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 30th January, 2024 whilst the 2nd Administrator and the Interested Party relied on their written submissions dated 1st March, 2024.

Background

5. This succession cause relates to the estate of the late Michael Muhiu Githinji who died intestate on 16th December, 2010.

A copy of the Death certificate Serial No. 214948 is annexed to the Petition for Grant of letters of Administration Intestate dated 4th March, 2015.

6. The Deceased was survived by the following persons:-

- (i) Teresa Wairimu Muhiu - Daughter
- (ii) Nicholas Githinji Muhiu - Son
- (iii) Julius Waiguru Muhiu - Son
- (iv) Esther Wanjiru Muhiu - Daughter
- (v) Grace Muthoni Maina - Daughter

7. The estate of the Deceased comprised the following assets:-

- “(a) Land Parcel Iria-ini/kaguyu/851
- (b) Land Parcel Iria-ini/Kaguyu/1100
- (c) Land Parcel Iria-ini/Kaguyu/1101
- (d) Land Parcel Laikipia/Nanyuki/S.timau Block 2/115
- (e) All shares with Housing Finance Company of Kenya
- (f) All shares with Kenya Commercial Bank (ordinary And Rights)
- (g) All shares with Kenya Airways
- (h) All shares with National Bank of Kenya
- (i) All shares with Standard Chartered Bank of Kenya
- (j) All shares with Uchumi Supermarkets Limited

Total estimated value Sh. 14,000,000/=.

Liabilities

(a) nil”

8. Following the demise of the Deceased Nicholas Githinji Muhiu (son) and Esther Wanjiru Muhiu (Daughter) Petitioned the court for Grant of letters of Administration Intestate. A Grant was duly issued to the two on 5th June, 2015.

9. The Grant issued to the two was duly confirmed on 21st July, 2016.

According to that confirmed Grant the mode of distribution of the estate was to be as follows:-



Schedule

Name	Description of Property	Share of Heirs
Marie Ann Nyambura Muhiu	LR Iriani/Kaguyu/851	To Inherit
Isaac Samson Githuthu Teresa Wairimu Muhiu Esther Wanjiru Muhiu Grace Muthoni Muhiu	LR Iriani/Kaguyu/1100	Equally
Julius Waigumi Muhiu	LR Iriani/Kaguyu/1101	To Inherit
Nicholas Githinji Muhiu Esther Muhiu Wanjiru (a) Teresa Wairimu Muhiu (b) Nicholas Githinji Muhiu (c) Isaac Samson Githuthu (d) Julius Waigumi Muhiu (e) Esther Wanjiru Muhiu (f) Grace Muthoni Muhiu (g) Marie Ann Nyambura Muhiu	LR Laikipia/Nanyuki/s. Timau Block 2/115 (Ethi) The Said Land to Be Sold And Shared Equally Among:-	To Be Registered In Their Names
Ann Francis Nyambura Maina	All Shares With Housing Finance Company of Kenya.	
Michael Muhiu Waigumi	All Shares With Kenya Commercial Bank (ordinary and Rights)	
Marie Ann Nyambura Muhiu	All Shares With Kenya Airways	
Martin Muhiu Githinji	All Shares With Standard Chartered Bank of Kenya	
Mary Angela Nyambura Githuthu	All Shares With Uchumi Supermarkets Limited	

10. The Applicant Julius Waigumi Muhiu who being a son to the Deceased is a direct beneficiary of the estate claims that the Administrators in connivance with other parties fraudulently indicated in the confirmed Grant that Title Number LR Iriani/Kaguyu/1100 was to be registered in joint names of the Applicant, his wife and children. The Applicant is aggrieved by this and submits that there is no known law which compels him to have the land allocated to him registered in the joint names of himself, his wife and children.
11. The Applicant alleges that his signature was forged on the consent to confirmation of the Grant. The Applicant now prays that the Title issued in joint names be cancelled and a fresh title be issued to him alone.
12. The 2nd Administrator who is a sister to the Applicant in her Replying Affidavit averred that it was the family of the Applicant who expressed the desire to have the land allocated to the Applicant registered in the joint names of the Applicant, his wife and children. She states that the Succession Cause is now concluded as Titles have already been issued and urges the court to dismiss this application.



13. The Interested party Phoebe Wangechi Mugwe is the wife of the Applicant. She states that the Applicant is her husband and annexes to her Replying Affidavit a copy of their marriage certificate Serial No. 881963 as proof. The Interested Party states she and her husband agreed that the parcel of land known as LR Iriani/Kaguyu/1100, would be registered in the joint names of herself, the Applicant and their adult children as this is the land which the family have been occupying. She urges the court to dismiss this application for rectification of Grant.

Analysis and Determination

14. I have carefully considered the Summons before this court, the replies filed thereto as well as the written submissions filed by both parties.
15. It is not in dispute that a certificate of confirmed Grant was issued in this matter on 21st July 2016. If the applicant was genuinely aggrieved by the manner in which the estate was distributed, then why did he wait until July, 2023 a full seven (7) years after the Grant had been confirmed to raise his complaint. It would seem that this application is nothing but a mere afterthought.
16. The Applicant prays that the confirmed Grant be rectified to remove the names of his wife and children from the Title of the land allocated to him and to have a new Title re-issued in his name alone.
17. The essence of this application for review is that the Applicant is seeking to amend and/or rectify the confirmed Grant. Rectification of Grants is provided for by Section 74 of the *Law of Succession Act* and Rule 43 (1) of the *Probate and Administration Rules*. Section 74 provides as follows:-

“

“74. 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.”

18. From the language 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. Such other minor errors in that genre can also be rectified through a Summons for rectification of Grant.
19. The changes being proposed by the Applicant are substantial and far reaching. The Applicant is seeking to have the Title Deed issued for LR No. Iriani/Kaguyu/1100 re-called/cancelled and re-issued in his name alone. He seeks to materially alter/affect the confirmed Grant issued by the court. In no way can the proposed amendments be described as minor errors in names and descriptions.



20. [In the matter of Estate of Geoffrey Kinuthia Nyamwinga\(Deceased\)](#) [2013] eKLR the court held as follows:-

“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.....”

21. I have perused the consent to confirmation of Grant which consent is dated 18th March, 2016. The Applicant Julius Waigumi Muhiu whose ID Number is given as [particulars withheld] has signed that consent. In signing the consent the Applicant was confirming his consent and approval to the mode of distribution of the estate. Having so given his consent it is serious and the Applicant has not explained why he now wishes to renege on that consent.

22. The Applicant alleges that his signature on the consent form was forged. Forgery or Fraud is a serious allegation – one which must be specifically alleged and properly proved. In the case of [Urmila w/o Mahendra Shah v Barclays Bank 9K0 LTD & Another](#) [1979] eKLR the court held as follows:-

“.....Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt something more than a mere balance of probabilities is required.”

23. The applicant has not produced any report from a document examiner proving that his signature on the consent was forged. To merely allege fraud/forgery with no proof of the same will not suffice.

24. I find that the Applicant signed his consent granting his approval to the mode of distribution of the estate. He cannot now cry fowl.

25. I do suspect that this present application may be due to a falling out or mis-understanding between the Applicant and his family. Whatever the case the issue is not for rectification of the Grant.

26. The Applicant is basically seeking a re-distribution of the estate. [In the case of Charles Kibe Karanja \(Deceased\)](#) [2015] eKLR, Hon. Justice William Musyoka stated as follows:-

“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 affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of Grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.....”

27. Based on the foregoing I find that this application is misplaced. The changes the Applicant seeks to effect are material and cannot be achieved under a Summons for rectification of Grant. The Applicant would have to seek to revoke the entire Grant and have a fresh Grant issued encompassing the changes he wishes to have effected on the Title Deeds.



28. Finally I find no merit in this application. The same is hereby dismissed in its entirety. This being a family matter each side will bear their own costs.

DATED IN NYERI THIS 4TH DAY OF JULY, 2024.

MAUREEN A. ODERO

JUDGE

