



**In re Estate of Njuguna Kagwai (Deceased) (Succession Cause 1397 of 2008)
[2024] KEHC 9621 (KLR) (Family) (7 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1397 OF 2008
SN RIECHI, J
AUGUST 7, 2024
IN THE MATTER OF THE ESTATE OF THE LATE NJUGUNA KAGWAI
(DECEASED)
SUMMONS FOR RECTIFICATION OF GRANT OF LETTERS OF
ADMINISTRATION**

BETWEEN

GEORGE WAINAINA NJUGUNA APPLICANT

AND

JOSEPH NGUGI NJUGUNA 1ST RESPONDENT

HANNAH WAMAITHA NGUGI 2ND RESPONDENT

RULING

- 1 Before this court is a summons for rectification of confirmed grant dated 15th October 2022 filed by George Wainaina Njuguna one of the three administrators in the matter, the other administrators being Joseph Ngugi Njuguna and Hanna Wamaitha Ngugi .
- 2 The application was filed under Section 74 of the [Law of Succession Act](#) and Rule 43 of the [Probate and Administration Rules](#) and seeks the following orders -
 1. Spent
 2. That The Grant Of Letters Of Administration Intestate Issued By Mis Honourable Court On 20d February 2016 Be Rectified By Removing The Name Of Mwaura Njuguna Alias Kennete Mwaura Njuguna As He Died On 27th July 2021.



3. That the Certificate of Confirmation of Grant issued on 4th November, 2021 be rectified as follows:-
 - a) By Removing The Name Of Mwaura Njuguna Alias Kenneth Mwaura Njuguna As He Died On 27th July 2021.
 - b) On The 1st Column Under The 2nd House, The Name Of Mwaura Njuguna Alias Kenneth Mwaura Njuguna A Beneficiary (deceased On 27th July 2021) Be Replaced With The Estate Of Mwaura Njuguna Alias Kenneth Mwaura Njuguna
 4. That The Current Signatories To The Joint Account No. xxxxxxxxxxxx Equity Bank Kikuyu That Includes Jane Njoki Mumira, Geoffrey Kamau Njuguna (deceased), Hannah Wamaitha Ngugi, John Ndichu Wainana Be Replaced With The Names Of The Three Surviving Administrators Namely Joseph Ngugi Njuguna, George Wainaina Njuguna And Hannah Wamaitha Ngugi
 5. That This Honourable Court Be Pleased To Make An Order Directing Two(2) Of The Surviving Administrators Namely Joseph Ngugi Njuguna And Hannah Wamaitha Ngugi To Co-operate With The Other Administrator George Wainaina Njuguna In Winding Up/ distributing The Estate To The Entitled Beneficiaries.
 6. That In The Alternative To Prayer 5 Above, George Wainaina Njuguna To Solely Proceed With The Process Of Distribution Of The Estate And Where Necessary This Honourable Court Be Pleased To Direct The Registrar Of This Honourable Court To Execute Or Sign On Behalf Of Joseph Ngugi Njuguna And Hannah Wamaitha Ngugi All The Documents That Are Required To Be Signed In The Process Of Distributing/windup The Estate.
 7. That This Honourable Court Be Pleased To Make An Order Directing Branch Manager Kikuyu Equity Bank To Pay A Sum Of Kshs 141,120 To Peter Mumira Kamau Id No xxxxxx From The Said Account No. xxxxxxxx As A Refund For Payment Of Land Rates For Title No. Dagoretti/mutuini/296 That Had Accrued Up To The Year 2021.
 8. That This Honourable Court Be Pleased To Make An Order That The Law Firm Of Kanyi Ndurumo&co Advocates And The Law Firm Of Makhecha & gitonga Advocates Be Paid Kshs 200,000 Each From The Said Joint Account No. xxxxxxxx Equity Bank Kikuyu Branch As Interim Legal Fees For Acting For The Estate.
 9. That cost of this application be paid from the Estate joint account no. xxxxxxxxxxxx.
- 3 The application is premised on the grounds on the face of it and is supported by an affidavit sworn by applicant on even date.
 - 4 The applicant briefly deponed that Mwaura Njuguna alias Kenneth Mwaura Njuguna being one of the administrators died on 27th July 2021. The applicant deponed that Joseph Ngugi Njuguna and Hannah Wamaitha Ngugi who are administrators are not co-operative in the manner of winding up distribution of the estate notwithstanding the fact a grant of letters of Administration intestate was issued on 2nd February 2016 and certificate of confirmation of grant was issued on 4th November 2021.
 - 5 The applicant stated that the advocate of other co-administrators have not made an application to court to have name Mwaura Njuguna(deceased) either removed as an Administrator or another person appointed in his place. In support applicant attached to the application a copy of his Advocates letter dated 8th December, 2021 addressed to M/s Makhecha Gitonga Advocates enquiring on the matter of



- removing the name of the Deceased Administrator or have another person appointed as a replacement Administrator.
- 6 The applicant stated that the Surviving Administrators have not been co-operating so that they can distribute the Estate in terms of the Ruling dated 6th May 2021 and Certificate of Confirmation Dated 4th November 2021. The applicant stated that the land rates for Title No. Dagoretti/Mutuini/296 accumulated to Kshs 448,123 by September 2021. In support he annexed to the application a copy of property Rates payment Request dated 28th September 2021 showing an amount of Kshs 448,123 as accumulated Rates.
 - 7 The Applicant Stated That In October 2021, He Requested Peter Mumira Kamau Id No xxxxxxxx A Son Of My Deceased Brother Geoffrey Kamau Juguna To Clear The Rates On Behalf Of The Estate As In That Month Of October 2021, The County Government Of Nairobi Granted A Waiver Of Interest On Accrued Rates And Accordingly The Amount Payable Came Down To Kshs 141,120. The Applicant Stated That It Is Only Fair And Just That Peter Mumira Kamau Be Refunded The Said Amount Of Kshs 141,120 From The Money Held In The Joint Account No. xxxxxxxxxx.
 - 8 The Applicant Stated He Requested Peter Mumira Kamau Id No xxxxxxxx To Clear The Land Rates As The Other Two Administrators Hannah Wamaitha Ngugi And Joseph Ngugi Njuguna Refused To Co-operate With Him To Pay The Rates From The Money Held In The Said Joint Account In Equity Bank Kikuyu Branch. The Applicant Referred To Annexed And Marked "gwn9" Copies Of Payment Receipt Issued To The Said Peter Mumira Kamau Amounting To Kshs 141,120. 16.
 - 9 The applicant averred that in the ruling delivered by the Court 6th May 2021 paragraph 23(iii) and Mediation Report of 4th September 2018 provided for legal costs to be paid from the said joint Account No. xxxxxxxxxx and accordingly it is only fair and just that the advocates of law firm Kanyi Ndurumo & Co. Advocates and Makhecha & Gitonga Advocates be paid Kshs 200,000/= each from the said joint Account No. xxxxxxxxxx Equity Bank Kikuyu branch as interim legal fees for acting for the Estate.
 - 10 The applicant stated that he is ready and willing to proceed with distribution of the Estate if the Court allows him to do so or directs the other two(2) surviving Administrators to co-operate with him to have the Estate Distributed and wound up. Alternatively, the Court can grant applicant permission to proceed with the Distribution of the Estate with the help of the Registrar of this Honourable Court to sign any documents on behalf of the two(2) Administrators that may be required/needed in the process of Distribution.
 - 11 In response to the application for rectification of letters of administration and confirmed grant the respondents filed grounds of opposition dated 2nd November 2022 on the grounds that the applicant's application brought under section 74 does not support the facts and orders prayed for therein as there are no errors on the grant of Letters of Administration. That the application is misconceived and abuse of court process.
 - 12 Parties counsel filed written submissions to the application and the objections. I have carefully analyzed and considered their submissions and case law authorities.
 - 13 Having considered the application, the objection and other documents filed, as well as the submissions of counsel on both sides, in my view the issues for determination are whether this court should rectify the Grant of Letters of Administration issued on 2nd February 2016 by removing the name of Mwaura Njuguna (Deceased). Secondly whether this court should rectify the Certificate of Confirmed Grant issued on 4th November,2021 by removing name of Mwaura Njuguna (Deceased). Thirdly whether this court should rectify 1st column under 2nd house the name of Kenneth Mwaura Njuguna a



beneficiary (Deceased on 27th July 2021) be replace with the Estate of Mwaura Njuguna alias Kenneth Mwaura Njuguna.

- 14 With regard to the second issue whether this court can rectify a certificate of confirmed grant of letters of administration to include assets acquired by the administrator after the grant was confirmed, I note that this court in a ruling dated 11th October 2019 ordered inter alia as follows –

"35

- (iv) THAT the rectified grant to be further amended to reflect that the 1st respondent is holding the properties as trustee for her own benefit and for the benefit of the other beneficiaries."

- 15 It is important to point out that the applicant is seeking rectification of letters of administration to have the name of Mwaura Njuguna who is deceased removed as an administrator of the estate. The applicant is also seeking rectification of the certificate of confirmation of grant under the same terms and to have the name of Mwaura Njuguna removed from the schedule of distribution and replace with the estate of Mwaura Njuguna.

- 16 In my view, this court cannot rectify the confirmed grant in the manner requested by the applicant. This is because the jurisdiction of this court to rectify a grant of letters of administration as conferred by Section 74 of the Law of Succession Act is limited since it provides as follows –

"74. 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."

- 17 In addition to the above provisions of the Act, Rule 43(1) of the Probate and Administration Rules provides as follows –

"43

- (1) 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 description 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 in Form 110 for such rectification through the registry in the cause in which the grant was issued."

- 18 It follows therefore from the above provisions of the law, that the powers or jurisdiction of this court in rectifying a grant of letters of administration is limited and specific and can only be used to rectify errors as to the names or description of any person or thing or 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.

- 19 The issue of the jurisdiction of this court in rectification of grants of representation, whether or not confirmed has been dealt with in various court cases. It will suffice here if I cite the case of – In the matter of the Estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR where the court stated as follows:

- 20 The law on rectification or alteration of grant 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 and 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 It follows in my view, this court is not clothed with the power to rectify the confirmed grant to include remove an administrator and also remove a beneficiary and replace the same with his estate. The present application for rectification of grant thus has to fail and is hereby dismissed.

DATED AT NAIROBI THIS 7TH DAY OF AUGUST 2024.

S. N. RIECHI

JUDGE

