



In re Estate of the Late Oira Thomas Ratemo (Deceased) (Succession Cause E662 of 2021) [2024] KEHC 12049 (KLR) (Family) (19 September 2024) (Ruling)

Neutral citation: [2024] KEHC 12049 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E662 OF 2021
SN RIECHI, J
SEPTEMBER 19, 2024
IN THE MATTER OF THE ESTATE OF THE LATE OIRA THOMAS RATEMO (DECEASED)

RULING

1. This matter relates to Thomas Ratemo Oira(Deceased) who was an advocate of the High Court of Kenya and died on 4.3.2021. A Petition for grant of Letters of Administration was filed and on 7.9.2021 grant of letters of administration was granted jointly to Eunita Kerubo Ratemo (widow) and Japheth Amenya Ratemo (son). On 13.2.2003, the Petitioners filed Summons for Confirmation of the grant.
2. Lenah Bosibori Ratemo filed objection to the confirmation of grant on the grounds that the applicants have failed to identify the shares of all persons beneficially entitled to the deceased's estate.
3. Upon hearing the parties this court made order that;

“It follows therefore that there are 2 children of the deceased who are underage and/or gifted differently who are still under the care and support of the widow Eunita. Their share can only be held in trust by an adult. In this case the widow. I therefore find that it will not be appropriate to share the estate at this moment.”
4. Subsequently a certificate of confirmation of grant was issued to the Administrators on 28th September,2023. The administrators have now filed instant application dated 13th November 2023 in which they seek orders that;
 1. Spent
 2. That this Honourable Court be pleased to Review its Judgment dated 28th day of September, 2023 and on the following aspects:
 - a. By directing that the Estate Of Oira Thomas Ratemo be distributed according to the consent on the mode of distribution by all the Beneficiaries dated 7th day of December, 2023 filed herewith together with the Application for Review of the Judgment.



- b. By directing that All the Properties listed in the Summons for Confirmation of Grant dated 13th day of February, 2023 be included in the Reviewed Judgment and be distributed according to the consent on the mode of distribution by all the Beneficiaries dated 7th day of December, 2023.
 - c. By Directing that all the Shares of Properties for one of the Beneficiaries Dolly Nyamisa Ratemo who is abled differently be held in trust for her by her Mother Eunita Kerubo Ratemo and the Appointed Legal Guardian.
 - d. By Directing that the Certificate of Confirmation of Grant dated be rectified to reflect the Changes Pursuant to the consent on the mode of distribution by all beneficiaries to the Estate Of Oira Thomas Ratemo (deceased).
 - e. By Directing that the Grant of letters of administration issued to Eunita Kerubo Ratemo on the 7th day of September, 2021 be amended to indicate the date of death of Late Mr. Thomas Ratemo Oira as per the Death certificate on the 24th day of March, 2021.
3. That the costs of this application be provided for.
5. The application is premised on the grounds on face of it and the supporting affidavit sworn by Eunita Kerubo Ratemo on even dated. The administrator briefly states that on the 7th day of September, 2021 a grant of Letters of Administration was granted Jointly to Eunita Kerubo Ratemo and Japheth Amenity Ratemo.
6. The administrator states that the Grant of Letters of Administration wrongly indicated the date of death of Late Mr. Thomas Ratemo Oira as 4th day of March, 2021 instead of the 24th day of March, 2021. She states that the Administrators of the Estate of OIRA THOMAS RATEMO on the 13th day of February, 2023 having ascertained all the Properties of the Deceased filed for Summons for Confirmation of Grant.
7. The administrator states that the Objector Lenah Bosibori Ratemo filed an Objection to the Confirmation of Grant for the Letters of Administration on the Grounds that the Applicants have failed to identify the shares of all persons beneficially entitled to the Deceased's estate.
8. She states that this Court delivered its Judgment on the 28th day Of September, 2023 and there is an error on the face of the Judgment. The administrator avers that a certificate of Confirmation of grant dated was issued and dated 13th February, 2023 leaving out some of the Properties forming the Estate Of Dira Thomas Ratemo (deceased) hence the urgency for rectification of the Certificate of Confirmation of Grant. She referred to "EK 5" a copy of the Certificate of Confirmation of grant.
9. The administrator states that It is imperative for the Court to review its Decision rendered on the 28th day of September, 2023 to include all the Properties listed in the summons for confirmation of Grant dated the 13th day of February, 2023 as forming part of the Estate of Oira Thomas Ratemo (deceased) and to rectify the Certificate of Confirmation of Grant.
10. She states that it will be Prejudicial to the Deceased's Estate if the Orders sought herein are not granted occasioning irreparable loss and damage to the Deceased's Estate.
11. The administrator stated that this Application has been brought without inordinate delay and in good faith since all the Beneficiaries have now agreed on the Mode of distribution of the Estate of Oira Thomas Ratemo.



12. The objector Lenah Bosibori Ratemo opposed the application and filed a replying affidavit 18.3.2024. She briefly stated that That she is biological daughter of the deceased and therefore a beneficiary entitled to a share in the estate of the deceased. That she does not require to prove dependency since she is a surviving immediate blood relative of the deceased as evidenced by attached copy of Nation Newspaper. The objector stated that when deceased died his property fell for distribution to his children, without discriminating that they were male or female, married or unmarried. The objector stated that she is an undisputed child of the deceased in intestacy and entitled to a share in the estate. The objector stated that she prays that the petitioners' application be disallowed for failure to attach the exhibits for material non- disclosure of facts by the Administrator on the exhibits in the supporting affidavit dated 7th day of December 2023 of Eunita Kerubo Ratemo. She stated that the Application is unproved by cogent and credible evidence.
13. From the application this court find that the main issue for determination is whether or not this court should review its judgement dated 28th September,2023.
14. The petitioner is seeking review of judgement on two grounds. Firstly, the petitioner is also seeking the review of the date of death of deceased to indicate 24.3.2021 instead of 4.3.2021 Secondly the review judgement dated 28th September,2023 which left out some of the property of the estate. The Petitioners contend that the following properties were left out during confirmation of grant;
 - i. Nyaribari Chache/B/B/Boruria/6467
 - ii. Nyaribari Chache/B/B/Boruria/6174
 - iii. Nyaribari Chache/B/B/Boruria/4066
 - iv. Nyaribari Chache/B/B/Boruria/6447
 - v. Shares in -Kenya National Bank,Absa Bank,KCB,Kenya Airways,Safaricom.
15. Review of decisions of a probate court is governed by Rule 63 of the Probate and Administration Rules, which provides as follows: -
 - “63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules
 - (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 Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (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.”



16. In *John Mundia Njoroge & 9 Others vs. Cecilia Muthoni Njoroge & Another* [2016] eKLR, the court cited Rule 63 of the Probate and Administration Rules, and then stated as follows:

“As stated above, the only provisions of the Civil Procedure Rules imported to the *Law of Succession Act* are orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time. Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by rule 63 of the Probate and Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the Civil Procedure Rules.”

17. It is, therefore, clear that any party seeking review of orders, in a probate and succession matter, is bound by the provisions of Order 45 of the Civil Procedure Rules. The substantive provisions of Order 45, state as follows:

“1.

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) ...”

18. Order 45 provides for three circumstances under which an order for review can be made. To be successful, the applicant must demonstrate to the court that there has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. A party may successfully apply for review, secondly, if he can demonstrate to the court that there has been some mistake or error apparent on the face of the record. The third ground for review is worded broadly: an application for review can be made for any other sufficient reason.

19. I have analyzed the application and I find that the applicant has pegged his application for review on ground of mistake or error apparent on the face of the record and discovery of new matter which was not within their knowledge.



201. In the instant application this court need to consider whether there is prove of is a mistake or error apparent on the face of the record that would warrant a review of its judgement. In *Muyodi vs. Industrial and Commercial Development Corporation & Another* (2006) 1 EA 243, the Court of Appeal considered what constitutes a mistake or error apparent on the face of the record, and stated as follows:
 21. In *Nyamogo & Nyamogo vs Kogo* (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal.”
 22. The judgment in question was delivered on 28th September 2023. The applicant is seeking review of the date of death of the deceased. The judgement reads that “... the deceased died on 4.3.2021”. From the pleadings filed by the applicant, I note that the death certificate reads that the deceased died on 24.3.2021.
 23. From the above, it is clear that the there is an error on face of record and indicating the date of death of deceased is as 4.3.2021 is a ‘mistake or error apparent on the face of the record’ .I therefore allow the review of deceased date of death to be 24.3.2021 instead of 4.3.2021.
 24. Secondly the applicant is seeking a review of judgement dated 28th September 2023 to include some of the deceased properties left out in his estate. I have perused the application of summons of confirmation of grant dated 13th February 2023. Under paragraph 42 of the supporting affidavit the applicant listed the properties of the deceased.
 25. I note that the petitioner included properties Title Number L.R.No. Nyaribari Cache/B/B/Boburia/6467 and Shares in KCB Bank Ltd,Kengen,Kenya Re,Absa Bank,National Bank of Kenya,Kenya Airways and Safaricom.
 26. I have perused the judgement and note that Number L.R.No. Nyaribari Cache/B/B/Boburia/6467 and Shares in -Kenya National Bank,Absa Bank,KCB,Kenya Airways,Safaricom were left out in the judgement. I find this was a mistake apparent on record and there is need to review the judgement and certificate of confirmation of grant to include the properties.
 27. For properties Nyaribari Cache/B/B/Boruria/6174, Nyaribari Cache/B/B/Boruria/4066 and Nyaribari Cache/B/B/Boruria/6447, I note that the petitioner has also included them as properties left out in the judgement although the same were not included in the summons of confirmation of grant. However, the petitioner has produced copies of title deeds which indicate the properties are registered in the name of deceased. Thereof I find that there is sufficient reason to include this property as part of deceased estate.
 28. Having set out the above, I hereby allow the application dated 13th November 2023.The Certificate of confirmation grant issued on 28th September, 2023 is rectified as hereunder;



Name	Description of properties	Share of Heirs
Eunita Kerubo Ratemo	i. Property bearing Title Number L.R. No.nakuru/Mitimingi Scheme 34; ii. Property bearing Title Number L.R. No.Nakuru/Mitimingi Scheme/181 iii. Property bearing Title Number L.R.no nakuru/Mitimingi Scheme/38 iv. Nyaribari Chache/B/B/Boruria/6467 v. Nyaribari Chache/B/B/Boruria/6174 vi. Nyaribari Chache/B/B/Boruria/4066 vii. Nyaribari Chache/B/B/Boruria/6447 viii. Shares in -Kenya National Bank,Absa Bank,KCB,Kenya Airways,Safaricom	To hold in trust for ; i. Lena Bosibori ii. Naomi Kemunto iii. Japheth Amanya iv. Dori Nyamisa v. Margaret Hilda

DATED AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2024

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S.N.RIECHI

JUDGE

