



REPUBLIC OF KENYA



In re Estate of M'Imunya Itunga Ncoro (Deceased) (Succession Cause 579 of 2008) [2024] KEHC 13738 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 579 OF 2008**

LW GITARI, J

OCTOBER 24, 2024

IN THE MATTER OF THE ESTATE OF M'IMUNYA ITUNGA NCORO (DECEASED)

BETWEEN

MARIO NKIO M'IMUNYA PETITIONER

AND

ROSE KANGAI OBJECTOR

AND

SABINA KALAYU M'IMUNYA APPLICANT

RULING

1. There are two applications pending before this court. The 1st one was filed on 28/10/2021 by the petitioner dated 28/10/2021 and one filed by a beneficiary filed in court on 11/4/2023.
2. The application dated 28/10/2021 was seeking the following orders:-
 1. That the court be pleased to rectify the certificate of confirmation of grant dated 9/12/2010 to include land parcel No. Tigania/Thananga/761 as part of the estate of the deceased.
 2. That the inhibition on the titles No./Tigania/Thananga/1531 to 1536 which are the resultant sub-divisions of the Land Parcel No.762 be lifted.
 3. That the court to decide whether Land Parcel No. Tigania/Thananga/761 form the estate of the deceased and how it should be distributed.
2. The petitioner submits that the summons for rectification of grant is not merited as it has not been brought under the ambit of Section 74 of the *Law of Succession Act* which provides for correction of errors and mistakes. The applicant submits that the prayer for lifting of the inhibition is not opposed as



it will pave way for the distribution of the properties as proposed in the application dated 11/4/2023. The petitioner submits that the application dated 28/10/2021 is not merited.

3. The summons dated 11/4/2023 seeks orders that the court be pleased to order the revocation of grant dated 31/10/2022 to enable her to distribute the estate of the deceased. The grant be amended so that they get their shares directly other than having the administrator holding them in trust. That the Land Parcel No. Tigania/Thananga/761 be included in the fresh grant and be distributed to the beneficiaries she further prays that the resultant sub-division of Land Parcel No. Tigania/Thananga/762 which are parcels No. Tigania/Thananga/1531-1536 be cancelled to facilitate the implementation of the grant.
4. The petitioner submits that the court should order that the grant be rectified to include Land Parcel No. Tigania/Thananga/761 in the certificate of the confirmed grant for distribution among the beneficiaries. The petitioner relies on Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules.
5. I have considered the application. The petitioner seeks an order that land Parcel No. Tigania/Thananga/761 be included as an asset forming part of the estate of the deceased and to be distributed equally to the beneficiaries. The petitioner seeks rectification of the grant. On the other hand the beneficiary in the summons dated 11/4/2023 seeks a similar order adding that the resultants parcels No. 1531-1536 be cancelled. In the circumstances I find that there is no dispute that the Land Parcel No. Tigania/Thananga/761 forms part of the estate of the deceased which should be distributed equally to all the beneficiaries. The only issue is whether the grant should be amended or rectified.
6. Section 74 of the Law of Succession Act provides as follows:-

"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. The wording of this section entails correction of errors and mistakes on the face of the grant or certificate of confirmation of grant without affecting the substance of the grant. These include errors in names, descriptions, errors as to the time and place of death of the deceased and the purpose for which a limited grant was issued. An error is an omission or mistake in the name, figures descriptions of parties and other minor omissions. Section 74 facilitates the rectification by way of correction, to rely on the section to include a property which was omitted is to stretch the section very far. It is my view that rectification is limited to correction of errors and for this reason where a property was omitted all the beneficiaries should be involved in having it in the grant and to sign a consent on how it should be distributed and if the parties do not agree they will have time to file protests and for the court to give directions on its distribution. I am persuaded by what Justice Musyoka state In the matter of the Estate of Hasalon Mwangi Kahero [2013] eKLR, that –"For purposes of Section 74 and Rule 43 it must relate to correction of errors in a name or description or in setting the time and place or deceased death or purpose of a limited grant..... But where the full name of a person or a full description of things or property is omitted, it would be stretching the meaning of the word "error" too far to say that it would amount to an error or mistake envisaged in Section 74 and Rule 43."
8. The inclusion of a property which was discovered after the grant was confirmed does not amount to an error. The omission does not fall under the purview of Section 74, the proper approach is to have certificate of confirmation of the grant cancelled and apply for a fresh confirmation.
9. I note from the summons dated 11/4/2023 that the beneficiary seeks an order that the Land Parcel No. Tigania/Thananga/761 be included in the grant for the distribution to the beneficiaries on equal



basis. The application is under Section 47 of the [Law of Succession Act](#) which gives this court inherent jurisdiction to issue such orders as may be necessary for the ends of justice and to prevent the abuse of the court process. The Section provides:

Section 47 of the [Law of Succession Act](#)

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”

10. This is buttressed by Rule 73 of the Probate and Administration Rules. I am of the view that since the parties are in agreement that the Land Parcel No. Tigania/Thananga/761 forms the estate of the deceased, I order that the certificate of grant shall be cancelled and an amended certificate of confirmation of grant be issued so as to include Land Parcel No. Tigania/Thananga/761 in the interest of justice and be distributed to the beneficiaries equally.
11. The second issue is whether the court should order revocation of the grant issued on 9/12/2020 and amended on 31/10/2022. The main ground for this prayer is that the petitioner had failed to diligently distribute the estate of the deceased for over two years.
12. Secondly the appellant submits that the respondent was to hold the shares of some beneficiaries who were minors which she had to hold their share in trust. The said beneficiaries should now get their shares as they are now adults. Section 76 deals with the Revocation and Annulment of grant under Section 76 (d) (i) (ii) (iii) (e) of the [Law of Succession Act](#) provides as follows:-
 - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - (ii) to proceed diligently with the administration of the estate;
or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) that the grant has become useless and inoperative through subsequent circumstances.”
13. On the other hand, Section 83(g) of the Law of Succession Act which provides for the duty of an administrator and states that an administrator is required to within six months from the date of the confirmation of the grant to complete the administration of the estate in respect of all matter and to produce to the court a full and accurate account of the completed administration of the estate of the deceased. The applicant has not produced the accounts for the administration of the estate as required under the law. The explanation offered by the administrator is not sound. The administrator of the



estate is appointed by the court and owes a duty to the court to abide by the law. The law is clear that if the administrator has failed to proceed diligently and to render each inventory or account as required, the aggrieved party may apply for an account or seek revocation of grant. The applicant further submits that the applicant held some properties for children who have now become of age. If the applicant was registered in trust for children who are now adults the grant is incapable of taking effect as it has now become useless and inoperative through subsequent circumstances. The children who were minors and have become of age have a right to get their share of the estate listed on the certificate of grant in their names and not under the name of the petition. The petitioner has failed to comply with the law and has not filed an account of the administration and the grant is incapable of taking effect. In the right of these undisputed facts. My view is that the grant is only good for revocation.

14. Finally the parties seek an order that Land Parcels Numbers Tigania/Thananga/1531-1536 be cancelled and the inhibitions placed on the titles be removed to facilitate distribution.
15. In the ruling dated 12/10/2020 Justice Gikonyo held that the land parcels No. Tigania/Thananga/1531-1536 were not registered in accordance with the grant and the parties may apply for appropriate orders. I should therefore grant the prayer to the parties as it is in compliance with the said ruling.

Conclusion:

16. I find that since the prayer for inclusion of Tigania/Thananga/761 was not indispute, the application is allowed. The said land parcel forms the estate of the deceased and should be included in the schedule for distribution to the beneficiaries on equal shares. The grant issued to the Petitioner is revoked and a fresh grant be issued to Sabina Kalayu M'Imunya who should file an account of the administration and distribution of the estate within six months. The titles for Tigania/Thananga/1531-1536 are cancelled and the inhibitions shall be removed to facilitate the distribution of the estate to the beneficiaries. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 24TH DAY OF OCTOBER 2024.

L.W. GITARI

JUDGE

24/10/2024

Ms Mugo for Petitioner

Mr. Mithega for Respondent – Absent

Ruling has been read out in open court.

L.W. GITARI

JUDGE

24/10/2024

