



**In re Estate of John Gikonyo Gituthu (Deceased) (Succession Cause
3129 of 2015) [2023] KEHC 22107 (KLR) (Family) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 22107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3129 OF 2015
EKO OGOLA, J
JUNE 22, 2023
IN THE MATTER OF THE ESTATE OF JOHN GIKONYO GITUTHU (DECEASED)**

RULING

1. The Summons before me is dated March 22, 2023 where the administrator of the estate of John Gikonyo Gituthu (deceased) pray for the following:-
 1. That the Certificate of Confirmation of Grant of Letters of Administration Intestate herein issued to the said Gituthu Gikonyo and Peris Wakiuru Itundu in this matter on the 10th day of July 2018 be reviewed and or revised and/or amended in the following respects as provided for by Rule 43(1) of the *Probate and Administration Rules*:-
 - a. Rectifying the description of the properties noted in the schedule as Loc.14/ Kiruri/1705 and Loc. 14/Kiruri/1354 to read Loc. 14/Kairo/1705 and Loc. 14/ Kairo/1354 respectively.
 - b. Amending the schedule of transfer of the shares in all that property known as L.R No. 209/2820/26 from Peris Wakiuru Itundu to Millicent Muthoni Gikonyo.
 - c. The shares herein below inadvertently omitted from the schedule of distribution be included and allocated to Peris Wakiuru Itundu
 - i. Five hundred (500) shares together with any additional dividends & shares in Kenya Electricity Generating Company Limited;
 - ii. Two hundred (200) shares together with any additional dividends shares in Equity Group Holdings Limited;
 - iii. Eight Hundred and Twenty (820) shares together with any additional dividends shares in Kenya Reinsurance Corporation Limited Share;



- iv. One thousand one hundred (1100) shares together with any additional dividends shares in Safaricom Limited (now Safaricom PLC)
 - v. Two thousand (2000) shares together with any additional dividends shares in Britam Holdings PLC
 - d. The property known as Sosian Sosian/Block 3/151 (Maundu Ni Meri) also forming part of the estate of the deceased but omitted from the Certificate of Confirmation of Grant to be included and the same allocated to Peris Wakiuru Itundu.
2. The Court be pleased to grant any such or further orders as it should deem fit in the interest of justice.
 3. Costs of the application be in the cause.
2. The Summons are based on the grounds set therein and the Affidavit of Gituthu Gikonyo and Peris Wakiuru Itundu. It is averred that there were errors in the description of the properties known as Loc. 14/Kairo/1705 and Loc. 14/Kairo/1354 which were erroneously noted as Loc. 14/Kiruri/1705 and Loc. Kiruri/1354 respectively. Also, the LR No. 209/2820/26 property shares were erroneously allocated to Peris Wakiuru Itundu instead of Milicent Muthoni Gikonyo. Further, to this, five thousand one hundred and twenty shares in six different companies were inadvertently omitted from the Summons for the Original grant.

Determination

3. I have considered the pleadings as filed and the question to be answered is whether the prayers sought could be issued.
4. Rectification of grants is provided for in section 74 of the [Law of Succession Act](#), cap 160, Laws of Kenya and Rule 43(1) of the [Probate and Administration Rules](#). Section 74 provides as follows:
 - “74. Errors may be rectified by court:

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.”
5. 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.
6. 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. I may add that such other minor errors in that genre could also be rectified.
7. In this case, the applicants in prayer 1(a) seek to rectify the description of properties. Rectifying the description of a property known falls within the court’s power to rectify a grant. This does not alter



the core of the judgments but simply gives a proper and complete description of the said property. I, therefore, grant Order 1(a) as prayed.

8. With regards to prayer 1(b) and (c) the applicants pray for orders to review and or revise and or amend the mode of distribution of a property and to further amend the grant to include properties which were omitted and to further distribute it to the beneficiaries of the estate. Such amendments would bring substantial changes to the certificate of confirmation of grant.

9. *In Re estate of Charles Kibe Karanja (deceased)* [2015] eKLR Musyoka J. 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.”

10. I am in agreement with this finding as an application for review would provide an opportunity to include the properties which were omitted and further redistribute the estate. 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*. The Provision states that:

“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.”

11. Among the imported procedures is the device of review under Order 45 of 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 of 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.

12. In this case assets were omitted from the schedule of the property to be distributed. Also, the Applicants seek to alter the mode of distribution. The applicants have not given reasons of the omission to include the assets. It could be that they have discovered the assets or they were omitted due to a mistake or error. Either way, the inclusion of the said assets and to further alter the mode of distribution of the properties can be cured by an application for review as prayed.

13. I, therefore, grant prayer 1(b), (c), and (d) of the Summons.

14. These orders are made in the best interest of and justice for the parties concerned. The Application succeeds entirely. The costs be in the cause.

It is so ordered.

DATED and DELIVERED at NAIROBI this 22nd day of June 2023

.....

E.K. OGOLA



JUDGE

In the presence of:

N/A for the Applicant

Gisiele Muthoni Court Assistant.

