



REPUBLIC OF KENYA



In re Estate of John Nganga Musa Muthuo Deceased) (Succession Cause 3506 of 2005) [2023] KEHC 22087 (KLR) (Family) (19 June 2023) (Ruling)

Neutral citation: [2023] KEHC 22087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 3506 OF 2005

EKO OGOLA, J

JUNE 19, 2023

**IN THE MATTER OF THE ESTATE OF JOHN NGANGA
MUSA MUTHUO ALIAS JOHN NGANGA MUTHUO ALIAS
JOHN NGANGA MUSA MUTHUU ALIAS JOHN NG'ANG'A
M. MUTHUU ALIAS JOHN NGANGA MUTHUU ALIAS JOHN
N.M. MUTHUU (DECEASED)**

RULING

1. The Summons before me are dated January 30, 2022. The Administrator seek rectification of the grant dated February 12, 2007 and further rectified on June 18, 2019. The Administrator, William Waweru Musa prays for orders that:-
 - a. The certificate of confirmation of grant be rectified to include the land parcels Nairobi/block 120/250 (orig part of LR No 6823) and Nairobi/Block 120/251 that was left out of the deceased estate and the said land parcels be registered in the names of William Waweru Musa to get (1/3 of shares out of the said parcels) Joyce Nyambura Wainaina (1/3 of shares out of the said land parcels) and to have a life interest and to hold in trust for the children in equal shares namely Erick Kibugi Wainaina, Rosemary Wanjiku Wainaina, Moses Ngahu Wainaina, and Ian Ndugire Wainaina, Haggah Wambui Muthuo, William Waweru Musa, Agnes Njeri Muthuo and Julius Macharia Muthuu on their own behalf (1/3 of shares out of the said land parcels) and in trust for all beneficiaries in equal shares namely Rosemary Wanjiku Muthuu, Ronah Nyambura Munyinyi and Peter Gicharu Muthuo.
 - b. The costs of this application be costs in the cause.



2. Attached to the Summons is a Lease for land parcel No Nairobi/Block 120/251 and a Letter of Allotment for parcel No Nairobi Block 120/250 (Orig Part of LR No 6823) all in the name of the deceased. Also, a Consent to Rectification of the Grant is signed by Rosemary Wanjiku Muthuu, Ronah Nyambura Munyinyi and Peter Gicharu Muthuo.

3. Rectification of grants is provided for in 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 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.”

4. 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.”

5. 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. The court may rectify errors in names and descriptions, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly. From the foregoing, the Administrator herein has demonstrated the error- his failure to include Nairobi/block 120/250 (orig. part of LR No. 6823) and Nairobi/Block 120/251 in the confirmed grant. All the beneficiaries agree with him that the grant be rectified to include the two parcels of land and the same be distributed accordingly.

6. Having perused the record, the consent from the beneficiaries, the annexures to the Summons, and having considered the applicable law, I allow the Summon as prayed.

7. Costs to be in the Cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE 2023

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E.K. OGOLA

JUDGE

IN THE PRESENCE OF:

N/A FOR THE ADMINISTRATOR

GISIELE MUTHONI COURT ASSISTANT.

