



In re Estate of Nderi Munyi (Deceased) (Miscellaneous Succession Cause 30 of 2017) [2023] KEHC 20687 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE 30 OF 2017**

LW GITARI, J

JULY 5, 2023

IN THE MATTER OF THE ESTATE OF THE LATE NDERI MUNYI (DECEASED)

BETWEEN

TRATISIOUS NGAJ SAMWEL 1ST PETITIONER

BEATRICE GAAJI NDERI 2ND PETITIONER

AND

PATRICK RUGENDO MBOGO 1ST PROTESTOR

GENESIA NJOKI NDERI 2ND PROTESTOR

RULING

1. This matter relates to the estate of Nderi Munyi (deceased) what is pending before this court is a summons dated 27/5/2022. The summons is brought under Section 47 and Section 74 of the Law of Succession Act (Cap160 Laws of Kenya). The applicant seeks an order that the certificate of confirmation of grant be rectified. The applicant seeks rectification to reflect the full acreage of Land Parcel No. Karingani/Mariani/3639 which is only 0.40 Ha. That is one acre and measures 1.29 and not 49.7 Acres as captured on the grant. He also submits that Land Parcel No. Karingani/Mariani/3639 measures 5.5 Acres.
2. The applicant also seeks an order that one of the beneficiaries, the second Petitioner ought to share Karingani/Mariani/3639 since she was well provided for as per her house and further that Erastus Mutembei Nderi was left out while sharing out L.R. Karingani/Mariani/3443.
3. That L.R. Karingani/Mariani/3639 was to be given to the house of Agnes Ciambura who had five children and ought to get a small portion of land as per the wishes of the deceased. The summons is supported by the affidavit of the applicant Tratisious Njagi Samuel sworn on 27/5/2022.



4. The second Protestor opposed the application vide an affidavit sworn on 28/11/2022. Her contention is that this court lacks jurisdiction to re-open the matter as the issues raised have been heard and determined. That the court is functus officio. It is also the contention by the respondent that the matters raised in the affidavit at paragraph 7 and 8 are res-judicata. I have considered the application and the submissions by both parties. There are two issues for determination. These are:-

1. Whether the court should order the rectification of the grant.
2. Whether this court has jurisdiction to re-distribute the estate.

I will proceed to determine these issues.

5. **Rectification of Grant:**

The jurisdiction of this court to order rectification of grant is donated by Section 74 of the Law of Succession Act. The Section provides:-

“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.”

6. The marginal notes under the section states that errors may be rectified by the court.

On the other hand Rule 43(1) of the Probate and Administration Rules provides: -

“Where the holder of grant seeks pursuant to 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 and places 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.”

7. From the wording of these provisions which deal with rectification of grant, it is clear that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased’s death and place of death of the deceased.

In general terms rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors is what rectification seeks to address.

In the matter of the Estate of Geoffrey Kinuthia Nyamweinga deceased [2013] eKLR the court stated.

“The law on rectification or alteration of grants 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 or place of 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....”

8. Other matters which may substantially affect the grant are best addressed through an application for review of the Judgment or appeal. The applicant seeks rectification of the acreage of Land Parcel No. Karingani/Mariani/3639 which is only 0.40 Ha and not 49.7 Acres. The applicant has annexed a certificate of official search annexure TN.S.I which shows that Karingani/Mariani/3639 measure



(0.40 Ha) zero Decimal Four Zero Hectares. The grant indicates that the property measures over 49 Acres. This court had relied on the affidavit of the applicant in support of summons for confirmation of grant. The description of the property had error in view of the particulars on the certificate of official search. The respondent in her submissions concedes that there is a typographical error on the application for confirmation of grant on Parcel of Land No. Karingani/Mariani/3639 which is approximately one acre. I find that the error on the description of this property which was erroneous is an error which this court can rectify. The grant should therefore be rectified to read Karingani/Mariani/3639 and be distributed as follows:

1. Genesiaz Njoki Samuel 0.10 Acres jointly
 2. Albina Kagendo
 3. Biwolt Muriithi - 0.20 Acres
 4. Justin Gitari - 0.25 Acres
 5. Wilfred Gitonga Samuel - 0.25 Acres
 6. Beatrice Gaaji Nderi - 0.40 Acres
9. The applicant was seeking an order for rectification on Land Parcel No. Karingani/Mariani/3443 as it measures 5.5 acres and sharing be adjusted slightly. There is nothing to show that there was an error on the description of the property. He is also seeking an order to adjust the distribution. As I have pointed out it is only the errors which this court can correct. A rectification is not a review. No redistribution or adjustment of shares can be dealt with in an application for rectification of grant. This court gave a Judgment and ruled on how the estate would be distributed. This court as submitted by the respondent is *functus officio*. It is a doctrine which gives the expression to the principle of finality. This doctrine is to the effect that a person who is vested with decision making powers may as a general rule, exercise those powers only once in relation to the same matter. This court has no power to revisit its decision and the party not satisfied has the right to appeal to the Court of Appeal. I therefore find that the grounds seeking redistribution of Land Parcel No. Karingani/Mariani/3443 and 3639 are without merits.

In conclusion I order that the grant be rectified so that Karingani/Mariani/3639 will read 0.40 Hectares and be distributed proportionately as stated at paragraph 8 above.

Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 5TH DAY OF JULY 2023.

L.W. GITARI

JUDGE

The ruling has been read out in open court.

