



REPUBLIC OF KENYA



In re Estate of Cecilia Nyakini Mutharia (Deceased) (Succession Cause 135 of 2013) [2023] KEHC 22095 (KLR) (Family) (3 July 2023) (Ruling)

Neutral citation: [2023] KEHC 22095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 135 OF 2013
EKO OGOLA, J
JULY 3, 2023
IN THE MATTER OF THE ESTATE OF CECILIA NYAKINI
MUTHARIA (DECEASED)**

RULING

1. What is before this Court is Summons for Rectification of the Certificate of Confirmation of Grant. The Administrators of the estate pray for the following:-
 - a. That the property described in row number 4 in the schedule of Certificate of Confirmation of Grant and described as Ng'enda/Gathage/395 be rectified to read as Title Number Ng'enda/Gathage/201.
 - b. That one of the beneficiaries, Michael Gathuku Mbugua (now deceased) as described in the distribution of property described in row 4 in the schedule of the Certificate of Confirmation of grant be substituted with his wife Mary Wanjiru Gathuku the sole Administrator of the Estate of Michael Gathuku Mbugua.
 - c. That the property described in row number 5 in the schedule of Certificate of Confirmation of Grant and described as Ng'enda/Gathage/201 be rectified to read as Title Number Ng'enda/Gathage/395.
 - d. That the Certificate of Confirmation of Grant dated March 4, 2014 and rectified on March 9, 2016 and June 26, 2019 be rectified to reflect the changes in prayer 1, 2, and 3 above.
 - e. That Costs be in the cause.
2. The Summons were supported by the Affidavit of Peter Ng'ang'a Mutharia and Gabriel Gichuhi Mutharia. They deposed that the beneficiaries have consented to the said amendments.



Determination

3. I have considered this Summons for Rectification of Grant and the Affidavits in support thereto. Rectification of Grants is provided for by Section 74 of the Law of Succession Act, Cap 160, Laws of Kenya which provides as follows:-

“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) of the Probate and Administration Rules further stipulate that:-

“43(1) 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 of descriptions of any person or thing or as to the time or place of the 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 issued.”

5. From the aforementioned provisions, rectification is allowed in order to correct a misdescription of a property or to correct a name which has not been fully or properly described in the Grant. Prayer (a) and (c) meet the threshold stipulated in Section 74 and Rule 43 aforementioned. I, therefore, grant prayer (a) and (c) as prayed.

6. As for Prayer (b), it seeks to substitute an administrator. This is not what was envisaged by Section 74 and Rule 43. Rectification of a Grant is only permissible to cure minor errors, mistakes and irregularities in the Grant. Rectification cannot be used to fundamentally alter the character of the Grant. However, Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

7. I therefore, grant prayer (b) as prayed.

8. The Summons dated March 2, 2023 is hereby allowed. Costs be in the Cause.

It is so ordered.

DATED and DELIVERED at NAIROBI this 3rd day of July 2023

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E.K. OGOLA

JUDGE

IN THE PRESENCE OF:

N/A FOR THE APPLICANT

GISIELE MUTHONI COURT ASSISTANT

