



**Mburia v Ileri & 2 others (Succession Cause 70 of 2016)
[2023] KEHC 20693 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 70 OF 2016**

LW GITARI, J

JULY 20, 2023

**IN THE MATTER OF THE ESTATE OF THE LATE MUSA
M'MUGA BAIBERE GACIGI (DECEASED)**

BETWEEN

FREDAH KAARI MBURIA APPLICANT

AND

CORNELIUS IRERI 1ST RESPONDENT

MARTHA CIRINDI WAMBUGU 2ND RESPONDENT

LUCY KATHAMBI MICHEU 3RD RESPONDENT

RULING

1. This cause relates to the estate of Musa M'Muga Baibere Gacigi (the "deceased") who died on June 21, 1976.

Background:

2. In this cause a grant of letters of administration was issued to John Njeru Musa M'Muga who unfortunately passed on before he could conclude the administration of the Estate. This court appointed Cornelius Ileri as the administrator of the Estate of the deceased. The administrator moved the court vide a summons for confirmation of grant dated October 15, 2017 and proposed a mode of distribution of the estate of the deceased comprised in L R No Mwimbi/Murugi/437 measuring 8.48 acres and Mwimbi/Murugi/99 measuring 3.16 acres.



3. A protest to the mode of distribution of the estate was filed by Eunice Nkunu. The protest was heard and determined. In a Judgment dated October 15, 2018, this court, (Justice Limo) identified the beneficiaries entitled to the estate of the deceased and ordered that the estate be distributed as follows:-

L.R. Mwimbi/Murugi/437

- a) Cornelius Ileri Musa - 2.328 Acres.
- b) Eunice Nkunu Nathaniel - 2.328 Acres
- (c) Sylira Kagendo Njeru - 2.328 Acres
- (d) Lydia Mukwaiti
Ashford Gitonga - 1.496 Acres jointly

L.R Mwimbi/Murugi/99- 3.16 Acres

- a. Gladys Wanja Isaiah - 2.328 Acres
- b. Lydia Mukwaiti
Ashford Gitonga - 0.832 Acres jointly

The grant issued to the administrator on May 12, 2017 was confirmed.

4. One of the beneficiaries Ashford Gitonga Musa filed a summons dated February 7, 2020 under Section 74 of the *Law of Succession Act*. He was seeking an order that Ashford Gitonga Musa M'Muga be substituted for Lydia Mukwaiti and her share of the estate to revert to the applicant. He also sought an order that the grant be rectified to reflect the substitution of Lydia Mukwaiti by the applicant. The summons was allowed in terms of prayer No 2 & 3 on March 4, 2020.

The applicant Maitha Cirindi Wambugu filed a summons dated June 21, 2021 seeking an order for revocation of grant so that the share of Eunice Nkunu could go to her daughters. The summons was not opposed and was granted as prayed. The grant was subsequently confirmed on March 8, 2022.

5. What is pending is an application dated July 21, 2022, the Applicant Freda Kaari Mburia sought orders for stay of implementation of the grant issued on March 8, 2022 to the 1st Respondent, review, a rectification of the said grant, and consolidation of portions granted to other dependants to the name of the Applicant.
6. The 2nd Respondent, through an affidavit sworn on August 4th August, 2022, opposed the application on the grounds that the rectification of a grant should not change the mode of distribution, and secondly, that the grant has already been implemented and any alteration has been overtaken by events.
7. The application was canvassed by way of written submissions.

The Submissions

8. It is the Applicant's submission that Josphine Kambura is willing to surrender her share of 0.476 acres to the Applicant and so is Jacqueline Kanyua Mburia. That the said shares should therefore be consolidated and given to the Applicant. Further, that the application is meant to rectify the errors and omissions in the grant and that unless the grant is rectified, the title deeds cannot be issued because the names appearing on the granting are not the official names of the beneficiaries.
9. On their part, the Respondents submitted that the application should fail because it will alter the distribution. Further, that the said rectification orders sought are meant to correct minor errors and



that if the Applicant is desirous of consolidating the shares, then she should wait for the issuance of titles before consolidating them.

Issues for Determination

10. I have considered the pleadings, and the submissions by the parties. The main issue that arises for determination is whether the summons meets the threshold for rectification of the grant.

Analysis

On Rectification of the Grant

11. Rectification of grant is provided for in Section 74 of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rule 43(1) of the Probate & Administration Rules. Section 74 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.”

Rule 43(1) provides:-

“Where the holder of the 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 and 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.”

12. It follows that the rectification of a grant of letters of administration is limited to matters set out in Section 74 of the *Law of Succession Act*. These matters specifically refer to corrections of errors which the court may order without changing the substance of the grant. These include errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of persons or things. See: *In the matter of the Estate of Hasalon Mwangi Kabero* [2013] eKLR and *In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased)* [2013] eKLR.
13. In this case, the Applicant is seeking to have the grant issued to the 1st Respondent to be reviewed/rectified in the following manner:
 - a. That the shares of Fridah Kaari Ngaba 0.476 acres, Josephine Kambura 0.476 acres and Jackline Kanyua Banks 0.476 acres out of L R Mwimbi/Murugi/437 be consolidated into one parcel measuring 1.428 acres in the name of Fridah Kaari Ngava, the Applicant herein.
 - b. That the Applicant’s name as it appears in the rectified certificate of confirmation of grant to wit Fridah Kaari Ngava be rectified to read Fredah Kaari Mburia as it appears in her National Identity Card.
 - c. That Josephine Kambura as it appears in the rectified certificate of confirmation of grant be rectified to read Josephine Kambura Weru as it appears on her National Identity Card.
 - d. That Jackline Kanyua Banks as it appears in the rectified certificate of confirmation of grant be rectified to read Jackline Kanyua Mburia as it appears on her National Identity Card.



14. The rectification of the names of Fridah Kaari Ngava, Josephine Kambura, and Jackline Kanyua Banks to reflect the names that appear in their respective National Identity Cards is in my view errors in names which can be rectified under the provisions of Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules. On the consolidation of the shares distributed to Fridah Kaari Ngava, Josephine Kambura and Jackline Kanyua Banks into one, I note from the record that the court had allowed an application dated 21/6/2021 with the result that the share of Eunice Nkunu who died before the implementation of grant should go to Martha Cirindi Wambugu, Josephine Kambura, Fridah Kaari Ngava, Lucy Kathambi Jones and Jackline Kanyua who are her daughters in equal shares.
15. This application was not opposed. The grounds upon which this application is made are that Josephine Kambura who live in the United States of the America would like to surrender her share to Freda Kaari Muburia and their shares be consolidated and surveyed as one portion measuring 1.428 acres in the name of the applicant Freda Kaari Mburia.
16. In opposing the application the respondent submits that the rectification seeks to alter the distribution of the estate. She further submits that she has implemented the certificate of confirmation of grant and new numbers have been issued and what remains is the issuance of the title deeds. She seeks rectification of the name of Lucy Kathambi Micheal to read Lucy Kathami Jones.
17. The averments by the 2nd respondents show that the grant has been executed and what is remaining is the issuance of tile deeds rectification of grant as provided under Section 74 and Rule 43 of the Probate Administration Rules (*supra*) is meant to correct errors which will not alter the grant substantially. The errors which the court can rectify on a certificate of grant are errors in names. This rectification correct errors in spelling of names or where the name is not the name in official documents like identity cards which are used to identify the beneficiaries. Rectification may also be ordered to correct errors in descriptions. This may be errors in the descriptions of arising from typing errors. The other is the time and place of deceased's death or for the correction of the purpose of a limited. Such rectifications are not likely to fundamentally change the grant. The intention of parliament is that minor errors should not vitiate the grant but can be corrected by the court.
18. The applicants are seeking rectification involving consolidating the shares, having them distributed to one person and some of the names will be as a consequence removed from the grant. This will no doubt fundamentally alter the grant and change the mode of distribution. Such a rectification is not what is envisaged in rectification of grant. The applicants have asserted that no prejudice will be occasioned. This is far from the truth as the 2nd respondent has demonstrated that the grant has been implemented and what remains is issuance of title deeds. There will be prejudice if rectification is ordered at this stage. There has been back and forth in this matter and considering the process undertaken by the respondent there should be no reverse gear. The matter should come to a close. In the circumstances I find that the prayer for consolidation of the shares is misconceived and is without merits.

In Conclusion:

1. The prayer for rectification/correction of names is allowed.
2. The prayer for consolidation of shares is declined.
3. I make no orders as to costs.

Dated, signed and delivered at Chuka this 20th day of July 2023.

L.W. GITARI

JUDGE



