



**In re Estate of Peter Kimani Thuku (Deceased) (Succession Cause 1941 of 2014)
[2023] KEHC 24361 (KLR) (Family) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1941 OF 2014
EKO OGOLA, J
SEPTEMBER 25, 2023
IN THE MATTER OF
FLORENCE WANJIKU NJOROGE APPLICANT**

RULING

1. What is before this Court for determination is an Amended Summons dated April 26, 2023 where the Applicant prays for the following:-
 - a. That the orders made at the point of confirming the grant issued to Susan Njeri Kimani, Mirica Wamaitha Kimani, and Florence Wanjiku Njoroje on the October 11, 2016 be reviewed in the following respects as provided for by order 45 of the *Civil Procedure Rules*:-

That another asset, the property Title No Tigoni/Tigoni/Block 1/3675 (0.0380 Ha) belonging to the estate of the deceased has been discovered subsequently after the confirmation of grant, which asset needs to be administered and included in the certificate of confirmation of grant for distribution to the entitled beneficiaries.
 - b. That costs of this application be in the cause.
2. Peter Kimani Thuku died intestate on April 22, 2008. The grant of letters of Administration intestate was issued on December 16, 2014 to Susan Njeri Kimani, Mirica Wamaitha Kimani, and Florence Wanjiku Njoroje. The grant was later confirmed on October 11, 2016. Susan Njeri Kimani, Mirica Wamaitha Kimani have since passed away and the Applicant is the remaining Administrators. The applicant has since discovered a new property that belonged to the deceased and she prays for the confirmed grant to be reviewed to include the said property.



Determination

3. I have considered the Summons as filed, the supporting Affidavit and the entire record of the court. Rule 73 of the *Probate and Administration Rules* provide as follows:-

“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.”

4. This provision gives a party leeway to file an application which is not otherwise provided for under the rules and affirms the inherent jurisdiction of the Courts to make such orders as may be necessary for the ends of justice. Under order 45 of the *Civil Procedure Rules*, review can only be allowed under the following circumstances: discovery of new and important matter of evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made; mistake or error apparent on the face of the record; and any other sufficient reason which may make the court to review its order.

5. In this matter, the administrator is seeking to review the confirmed grant to include a property that was unknown to them by the time the grant was being confirmed. This review can therefore be under the discovery of new evidence which was not within their knowledge before the grant was confirmed. As stated in the case of *In re Estate of Kanyingi Gatwe (Deceased)* [2018] eKLR

“Where property is discovered after confirmation, the parties have a window to go back to Court with an application for review for the confirmation of the grant to be reconsidered within the same cause.”

6. Annexed to the amended summons is a copy of the certificate of official search showing that the property is registered in the name of the deceased. In my view, the applicant has satisfactorily demonstrated to this court that the said property belongs to the deceased’s estate and should therefore be included therein at this point.
7. In view of the foregoing, I find that the amended summons dated April 26, 2023 merited, and is hereby allowed. Costs in the cause.

It is so ordered

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Muchemi for the Applicant

