



**In re Estate of Dismas Wachiuri Ngunjiri (Deceased) (Succession Cause 2050 of 2010) [2023] KEHC 24436 (KLR) (Family) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24436 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2050 OF 2010  
EKO OGOLA, J  
SEPTEMBER 21, 2023  
IN THE MATTER OF THE ESTATE OF DISMAS WACHIURI NGUNJIRI (DECEASED)**

**IN THE MATTER OF  
MONICA WAIRIMU GAKUI ..... 1<sup>ST</sup> APPLICANT  
PRISCILLAH NYAWIRA MATU ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. The Summons before this Court are dated November 15, 2021. The Applicants pray for the following:-
  - a. That the shares with Stima Sacco and KCB Group be added in the Certificate of Confirmation of Grant issued on April 22, 2013.
  - b. That the Certificate of Confirmation of Grant dated April 22, 2013 be amended to reflect the Stima Sacco and KCB shares as part of the estate of deceased assets.
  - c. That the cost of this Application be in the Cause.
2. The Summons were based on the grounds set therein and the joint supporting affidavit sworn by the Applicants.
3. The deceased died intestate on February 25, 2008. He was survived by a widow, a son, and a daughter. The widow and the deceased sister-in-law were issued with grant of letters of administration intestate on May 21, 2012. The said grant was confirmed on April 22, 2013.
4. According to the Applicants, the Stima Sacco and KCB Group shares were inadvertently omitted from the schedule of assets in the Confirmed grant. The Applicants annexed to the Summons is a consent



from the remaining two beneficiaries agreeing to the mode of distribution of the said assets. It is for this reason that the Applicants pray for rectification of the confirmed grant.

### Determination

5. I have considered this Summons for Rectification of Grant and the Affidavit 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.”

6. Rule 43(1) of the *Probate and Administration Rules* further stipulates 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.”

7. 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.
8. So, does discovery of new assets fit in the conditions stipulated in the aforementioned provisions? In *Re Estate Of Charles Kibe Karanja (Deceased)* 2015 eKLR the Court held as follows:-

“If there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”

9. From the foregoing I find that the sweeping changes of adding new assets to the already confirmed grant does not fall under the scope of rectification under section 74. Applicants should have applied for a review of the confirmed grant on the grounds of discovery of new assets that were not known to them at the time of applying for confirmation of grant.



10. However, this Court is still clothed with jurisdiction to issue orders that will meet the end of justice. 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.”

11. From the foregoing, I allow the Summons dated November 15, 2021 as prayed. Cost of the Application be in the cause.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023**

.....

**E.K. OGOLA**

**JUDGE**

**In the presence of:**

Mr. Gathege for the Applicants

Gisiele Muthoni Court Assistant

