



REPUBLIC OF KENYA



**In re Estate of Charles Kipkemoi Yego (Deceased) (Succession Cause E027 of 2022)
[2023] KEHC 24364 (KLR) (Family) (18 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E027 OF 2022
EKO OGOLA, J
SEPTEMBER 18, 2023**

IN THE MATTER OF

**LILY JEPKOECH YEGO 1ST APPLICANT
ELLY PATRICIA JEMUTAI YEGO 2ND APPLICANT**

RULING

1. The Summons before the Court are dated 14th April 2023. The Applicants pray for the following Orders:-
 - a. That the confirmed Grant of Letters of Administration Intestate made to the said Lily Jepkoech Yego and Elly Patricia Jemutai Yego in this matter on the 14th April 2022 be reviewed;
 - b. The cost of the Application be costs in the cause.
2. The Summons were based on the grounds set therein and the joint Supporting Affidavit sworn by the Applicants.
3. The Applicants were issued with Grants of Letters of Administration on 14th April 2022. The schedule of assets of the Estate was presented to Court on 25th October 2022. Thereafter, a Certificate of Confirmation of Grant was issued on 31st October 2022. One of the properties in the aforesaid schedule, ABSA Bank Account Number xxxx was omitted and only came to the attention of the joint Administrators after the Confirmation of Grant. It is stated that the beneficiaries now desire that the Confirmed Grant be reviewed to include the said bank account.



Determination

4. 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.”

5. 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 Court 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.

6. In this matter, the administrator is seeking to amend the grant to include properties which were omitted from the confirmed grant. 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.”

7. Annexed to the Summons is a copy of email communication between the Applicants’ counsel and the Branch Operations Lead of ABSA Bank Muthaiga Branch confirming that the ABSA Bank Account Number xxxx belongs to the deceased. In my view, the Applicants have satisfactorily demonstrated to this Court that the said Bank account belongs to the deceased’s estate and should therefore be included therein at this point.

8. In view of the foregoing, I find that the Summons dated 14th April 2023 merited. I order as follows:

- a. The certificate of confirmation of grant issued on 31st October 2022 is hereby reviewed.
- b. ABSA Bank Account Number 203889135 be included in the schedule of the properties of the deceased and be distributed to the beneficiary.
- c. Costs be in the cause

It is so Ordered

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2023.

E.K. OGOLA

JUDGE

In the presence of:

Ms. Wambo for the Administrators

Gisiele Muthoni Court Assistant

