



**In re Estate of Hiram Ngaithe Githiri aka Hiram Ngaithe Githire
aka Hiram Ngaithe aka Hiram Ngaithe (Deceased) (Succession Cause
1128 of 2009) [2023] KEHC 23490 (KLR) (Family) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 1128 OF 2009

MA ODERO, J

OCTOBER 6, 2023

**IN THE MATTER OF THE ESTATE OF HIRAM NGAITHE GITHIRI AKA HIRAM
NGAITHE GITHIRE AKA HIRUM NGAITHE AKA HIRAM NGAITHE (DECEASED)**

SERAH WANJIKU KINUTHIA.....1ST APPLICANT

MARGARET WANIA KAHATO.....2ND APPLICANT

VERSUS

ANNE NGAITHE1ST RESPONDENT

CHARLES KARAU KARIUKI.....2ND RESPONDENT

HIRAM NGAITHE KARIUKI3RD RESPONDENT

JOSEPHINE NJERI KARIUKI.....4TH RESPONDENT

RULING

1. Before this Court for determination is the Notice of Motion dated 22nd September 2022 by which the Applicants Serah Wanjiku Kinuthia and Margaret Wania Kahato seek the following orders:-

- “ 1. That the Grant of letters of Administration issued to Serah Wanjiku Kinuthia, Anne Ngaithe and Hiram Ngaithe Kariuki on the 9th day of July 2010 and confirmed on the 12th July 2011 be reviewed in the following respect:-
- a. That all assets and properties of the deceased be shared equally between the four children of the deceased.
 - b. That the listed beneficiaries who are not the children of the deceased be removed from the list of the beneficiaries.



2. That pending hearing and determination of this application interparties this court be pleased to issue an order staying implementation of the grant issued on the 9th day of July 2010 and confirmed on the 12th July 2011.
 3. That the cost of this application be provided for.”
2. The application which was premised upon Article 27 of *the Constitution* of Kenya 2010, Section 3A, and 80 of the *Civil Procedure Act* Cap 21, laws of Kenya Order 45 Rule 1 of the *Civil Procedure Rules*, Section 38 of the *Law of Succession Act* Cap 160, laws of Kenya Rules 63 and 73 of the *Probate and Administration Rules* and all other enabling provisions of law was supported by the Affidavit of even date sworn by the 1st Applicant.
 3. The Respondents opposed the application through the Replying Affidavit dated 28th February 2023 sworn by Hiram Ngaithe Kariuki (the 3rd Respondent).
 4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 2nd April 2023 whilst the Respondents relied upon their written submissions dated 3rd July 2023.

Background

5. This Succession Cause relates to the estate of the late Hiram Ngaithe Githiri (hereinafter ‘the Deceased’) who died intestate on 12th October, 2008. A copy of the Death Certificate serial No. 282467 is annexed to the Petition for Grant of letters of Administration Intestate dated 2nd March 2009.
6. The Deceased was survived by the following persons:-
 - (a) Josephine Njeri Ngaithe - Widow
 - (b) Margaret Wania Kahato - Daughter
 - (c) Serah Wanjiku Kinuthia - Daughter
 - (d) Anne Ngaithe - Daughter
 - (e) Peter Kariuki Ngaithe - Son (Deceased)
 - (f) Hiram Ngaithe Kariuki - Grandson
 - (g) Charles Karau Kariuki - Grandson
 - (h) Josephine Njeri Kariuki - Grand-daughter
7. The estate of the Deceased was said to comprise of the following assets:-
 - a. Kabete/Karura/1026
 - b. Kabete/Karura/1027
 - c. Kabete/Karura/25
 - d. Kabete/Gathiga/T.146
 - e. Maela/Ndabibi Block 2/153
 - f. Maela/Ndabibi Block 2/16
 - g. Kabete/Karura/419/6



- h. 1858 Ordinary Shares in Centum Investments (formerly ICDC)
- i. 500 Ordinary Shares Kengen
- j. 396 Ordinary Shares in East African Breweries Limited (EABL)
- k. 410 Ordinary Shares in British American Tobacco (BAT)
- l. Shares in Standard Chartered Bank Limited.
- m. 6 Ordinary shares in Kenya Grain Growers Co-operative Union Ltd.
- n. Shares in Embakasi Ranching Company Ltd – No. 2606
- o. Shares in Embakasi Ranching Company Ltd – 8676
- p. Shares in Gema Holdings Limited.
- q. Shares in Tabete Farmers Co. Limited.
- r. 1,000 Ordinary Shares in National Bank of Kenya Limited.
- s. Bank A/C at HFCK No. 33XXXX0.
- t. Bank A/C at Kiambu Unity Finance Co-op Union Ltd No.22XXXX08.
- u. Bank A/C at Standard Chartered (Fixed) No.01XXXX00
- v. Bank A/C at Standard Chartered (Savings) No.01XXXXXX00.
- w. Bank A/C at National bank.

Total estimated value Shs. Five Million (Kshs.5,000,000.00).

Liabilities

- a) Nil.
8. Following the demise of the Deceased Grant of Letters of Administration Intestate were on 9th July 2010 issued to Serah Wanjiku Kinuthia, Anne Ngaithe and Hiram Ngaithe Kariuki. The Grant was duly confirmed on 12th July 2011.
 9. The Applicants have now filed this present application seeking to have the confirmed Grant reviewed. They allege that the estate was not equitably distributed. That the 1st Respondent has disinherited the Applicants and other beneficiaries. The Applicants allege that they were never summoned to appear in court during the confirmation of the Grant. They urge that unless the distribution of the estate is reviewed as prayed then the Applicants will be prejudiced unfairly.
 10. On their part the Respondents vehemently oppose any review of the confirmed Grant. They deny the Applicants allegation that they have been disinherited.
 11. The Respondents assert that each beneficiary voluntarily gave consent to the mode of distribution of the Estate. They state that the estate has already been distributed and that parties have taken possession of their respective shares.
 12. According to the Respondents the present application for review of the Grant is a mere afterthought and has no merit. They urge the court to dismiss the same in its entirety.



Analysis and Determination.

13. I have carefully considered the application before this court, the Reply filed by the Respondents as well as the written submissions filed by both parties.
14. It is common ground that the Deceased in this matter died intestate on 12th October, 2008. It is also not in dispute that Grant of representation was on 9th July 2010 made to the 1st Applicant together with the 1st and 3rd Respondents. The said Grant was duly confirmed on 12th July 2011.
15. I have carefully perused the certificate of confirmed Grant dated 12th July 2011. The estate was distributed in various proportions to all the beneficiaries. The Applicants Serah Wanjiku Kinuthia and Margaret Wania Kahato are both included in the distribution and were allocated a portion of the estate. The claim that they have been disinherited therefore holds no water at all.
16. It is pertinent to note that all the beneficiaries consented to the mode of distribution of the estate. There is in the file a consent to the mode of distribution dated 13th July 2011 duly signed by all the beneficiaries including the Applicants herein. The consent is witnessed by an Advocate Sophia Wambui N. The Applicants have not denied signing the said consent nor have they alleged that their signatures on that consent were forged.
17. The record indicates that on 12th July 2011 the matter came up before Hon. Justice Maraga (as he then was). Advocate Wambui appeared for the Petitioners and prayed that the Grant be confirmed as per the signed consent. There being no objection from any party the Hon. Judge proceeded to adopt the consent and confirmed the Grant. There has been no allegation by the Applicants that their written consent was procured through fraud coercion or by any other illegal means.
18. I note that the Grant was confirmed in July 2011. It is not until September 2022 over ten (10) years later that the Applicants apparently have a change of mind and move the court seeking to review the Grant. If the Applicants were dissatisfied with the mode of distribution of the estate why has it taken them so long to take action. This application is clearly an afterthought.
19. The essence of this application for review is that the Applicants are seeking to amend and/or rectify the confirmed Grant.
20. Rectification of Grants is provided for by Section 74 of the *Law of Succession Act* and Rule 43 (1) of the *Probate and Administration Rules*. Section 74 provides as follows: -
 - “74. Errors in names and descriptions, or in setting fourth 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.”
21. Rule 43(1) provides as follows:-
 - “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 or descriptions of any person or thing or as to the time or 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.”
22. From the language of section 74 of the *Law of Succession Act* and Rule 43(1) of the Probate and Administration Rules, the scope of ‘rectification’ of Grants of representation is limited to 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. Such other minor errors in that genre can also be rectified through a Summons for rectification of Grant.
23. The changes being proposed by the Applicant are substantial and far reaching. The Applicants are in effect seeking to have the entire estate redistributed. They seek to materially alter/affect the confirmed Grant issued by the court. In no way can the proposed amendments be described as minor errors in names and descriptions.
24. In the matter of *Estate of Geoffrey Kinuthia Nyamwinga(Deceased)* [2013] eKLR the court held as follows:-
- “The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules.....What these provisions mean is that errors may be rectified by the Court where they relate to names or descriptions, or setting out of the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.....
- Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the *Law of Succession Act*, the applicant ought to approach the Court under Order 44 of the *Civil Procedure Rules*. A review under Order 44 of the Civil procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the fact of the record, or for any sufficient reason. The applicant in this case should have moved the court under this provision – Order 44 of the *Civil Procedure rules* on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of grant. [own emphasis]
25. Therefore in order to merit a review of this Grant the Applicants must place reliance upon Order 45 of the Civil Procedure Rules 2010 which is imported into Succession practice by Rule 63 of the Probate and Administration Rules.
26. Under Order 45 a review may only be allowed in the following circumstances: -
- “(i) Discovery of new and important evidence, which after exercise of due diligence was not within the knowledge of the Applicants and could not be produced at the time the Grant was being confirmed.
- (ii) mistake or error apparent on the face of the record
- (iii) Any other sufficient reason.”
27. There has been no demonstration by the Applicants of the discovery of new and important matters which were not within their knowledge at the time when the Grant was being confirmed. Likewise there has been no demonstration by the Applicants of an error apparent on the face of the record. In short no sufficient reason has been advanced to merit any review of the confirmed Grant.
28. As stated earlier this Grant was confirmed in July 2011 now Eleven (11) years later the Applicants file an application seeking to have the confirmed Grant reviewed. I have no doubt that as stated by the Respondents the estate has already been distributed. The Applicants are merely seeking to have a second bite at the cherry.



29. If the Applicants were truly aggrieved with the manner in which the estate was distributed they ought to have moved swiftly to file a summons for revocation of Grant. Instead they sat pretty for over ten (10) years. This present application is frivolous and is an abuse of court process. It has no merit at all. The Notice of Motion dated 22nd September 2022 is hereby dismissed in its entirety. The Applicants shall meet the costs for this application.

DATED IN NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

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MAUREEN A. ODERO

JUDGE

