



REPUBLIC OF KENYA



**In re Estate of the Late John P Ngethe Ngure alias PN Ngethe (Succession Cause 155 of 2016) [2024] KEHC 14467 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14467 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 155 OF 2016  
HI ONG'UDI, J  
NOVEMBER 21, 2024  
IN THE MATTER OF THE ESTATE OF THE LATE  
JOHN P. NGETHE NGURE ALIAS JOHN P. N. NGETHE**

**BETWEEN**

**PERIS MARGARET WANJIRU NGETHE ..... ADMINISTRATOR**

**AND**

**JANE MUMBI NGETHE ..... ADMINISTRATOR**

**RULING**

1. The 2<sup>nd</sup> Administrator/Applicant (Peris Margaret Wanjiru Ngethe) filed the summons for rectification of grant dated 19<sup>th</sup> June, 2024 seeking the following orders:
  - i. Spent
  - ii. That this Honourable court be pleased to rectify the Amended Grant of Letters of Administration Intestate (P & A 41) in this matter dated 15<sup>th</sup> May, 2018 as follows:
    - a. The 1<sup>st</sup> Administrator (Esther Nyokabi Ngethe's – (deceased's name) be removed from the list of Administrators.
    - b. The names of Jane Mumbi Ngethe – (3<sup>rd</sup> administrator/ Protestor) and Peris Margaret Wanjiru Ngethe – (2<sup>nd</sup> Administrator/Applicant) to replace the name of Esther Nyokabi Ngethe – Deceased as Administrators.
  - iii. That there was an apparent error in the body of the Judgment delivered on the 17<sup>th</sup> May, 2024 at Paragraph 135 (vi) and (vii) where the Honorable Judge erroneously captured seven (7) beneficiaries instead of six (6) beneficiaries.
  - iv. That the cost of this application be borne by the 2<sup>nd</sup> administrator/applicant



2. The summons is premised on the grounds on its face plus the affidavit of the applicant sworn on 19<sup>th</sup> June, 2024. The application is founded on the fact that Esther Nyokabi Ngethe one of the three (3) administrators passed away on 28<sup>th</sup> August, 2019 in the course of the proceedings. It was therefore the applicant's desire to have the grant amended by removing the deceased's name from the grant. She also averred that the beneficiaries are six (6) and not seven (7) as stated at paragraph 135 (vi) and (vii) of the Judgment delivered on 17<sup>th</sup> May, 2024. That counsel for the 3<sup>rd</sup> administrator/respondent was notified of the need for rectification of the grant vide the letter dated 27<sup>th</sup> May, 2024 (P. M. N – III).
3. In response the 3<sup>rd</sup> administrator/respondent filed a replying affidavit sworn on 2<sup>nd</sup> September, 2024. She deponed that she had no opposition to prayer No. (ii) of the application as she was aware that Esther Nyokabi Ngethe was deceased.
4. In response to prayer No. (iii) she said she had read the Judgment and did not see any error under paragraph 135 (vi) and (viii) as the beneficiaries were seven (7) as stated by Ngugi J (as he then was). That the statement on the number of beneficiaries is set out at paragraph 134 of the Judgment. Her advocate had communicated this to the applicant's counsel vide a letter dated 22<sup>nd</sup> July, 2024 (JPN 1).
5. She deponed that in the Judgment her name was missed out at paragraph 135 (vi) and (viii) of the Judgment but Ngugi J had already stated in the Judgment that all the beneficiaries in the estate were to benefit from the sale proceeds of the captured properties.
6. Mrs. Mukira for the applicant filed submissions to the application while the respondent wholly relied on her replying affidavit.
7. In the submissions dated 27<sup>th</sup> September, 2024, Mrs. Mukira for the applicant set out what is indicated in paragraph 135 (vi) and (viii) of the Judgment. She thus submitted that there was a clear clerical mistake on the face of the Judgment since only six (6) beneficiaries were to benefit from the properties named at paragraph 135 (vi) and (viii) of the Judgment. Further that if indeed the court was minded on apportionment to the 7<sup>th</sup> beneficiary it would certainly not have missed out on the name as it did on the other shares. She urged the court to review and rectify the number of beneficiaries to read six (6) instead of seven (7). She also prayed for costs.

### **Analysis and determination**

8. I have duly considered the application, affidavits, the applicant's submissions and the Judgment herein. It has been confirmed that the prayer for rectification of grant in terms of prayer No. (ii) is not contested. The same shall be granted.
9. In contention is prayer (iii) which relates to the number of beneficiaries to benefit from the sale of the motor vehicle KAP 421 S and the deceased's share in Plot No. 3 Kahuhu Market. In both paragraph 135 (vi) and (viii) Ngugi J states it is seven (7) beneficiaries to benefit. However, when he proceeds to state the names he lists six (6) and not seven (7) names.
10. Going back to paragraph 134 of the Judgment the same states as follows:

“I have, then, working backwards from that consequential decision done my best to equitably distribute the remaining properties taking into consideration that the 1<sup>st</sup> house has two remaining units (Peris and Estate of Esther); the second house has four units (The protestor and her three children); and the third house has only a single unit (Judy – her mother having pre-deceased the Deceased). The distribution also takes in to account the relative values and sizes of the landed property. Finally, I have considered the circumstances of each beneficiary including the fact that the third house has a beneficiary who is a minor i.e Judy. Am obligated



to take her best interests in account – see, for example, In re. Estate of William Kipsang Susienei (Deceased) [2021] eKLR”.

11. Considering the number of units in each house, the same total to seven (7) and not six (6). Secondly the honourable Judge did not mention anything that would have led to any interpretation on why he wrote seven (7) beneficiaries yet only listed six (6) names, in paragraph 134 (vi) and (viii).
12. Similarly, in Paragraph 135 (c) the Judgment reads that any balance of the amounts shall be shared equally among all the seven (7) beneficiaries. Yet only six (6) names are listed. After due consideration of the evidence on record plus the judgment and in particular paragraphs 133 and 134 I find that the protestor/respondent was recognized as a wife hence a beneficiary of the deceased.
13. The protestor/respondent is among the seven (7) beneficiaries identified by the court. There is therefore no reason why she should be excluded when the Judgment at paragraph 135 (c) (vii) and (viii) talks of seven (7) beneficiaries. I find that to be an error which is subject to rectification by virtue of section 74 of the Law of Succession Rule 43(1) of the Probate and Administration Rules, Section 80 and 99 of the *Civil Procedure Act*. There is therefore merit in terms of rectification of the grant and correction of the error in the Judgment.
14. I hereby allow the application for rectification of the amended grant of letters of administration dated 15<sup>th</sup> May, 2018 by:
  - i. Removing the name of Esther Nyokabi Ngethe from the list of Administrators
  - ii. The names of the Administrators shall henceforth be: Jane Mumbi Ngethe and Peris Margaret Wanjiru Ngethe. A further rectified grant to be issued to that effect.
  - iii. The Judgment at paragraph 135 (v) (c), 135 (vi) & 135 (vii) shall be rectified to add the name of Jane Mumbi Ng’ethe as the seventh (7<sup>th</sup>) beneficiary as it was erroneously omitted.
  - iv. There shall be no order as to costs
15. Orders accordingly.

**DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG’UDI**

**JUDGE**

