



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of David Wahome Mugereki (Deceased) (Succession Cause E001 of 2021) [2024] KEHC 15571 (KLR) (2 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
SUCCESSION CAUSE E001 OF 2021
F GIKONYO, J
DECEMBER 2, 2024**

**IN THE MATTER OF THE ESTATE OF DAVID WAHOMÉ MUGEREKI (DECEASED)
IN THE MATTER OF AMENDMENT OF CERTIFICATE
OF CONFIRMATION OF GRANT AND IN THE
MATTER OF THE LAW OF SUCCESSION ACT, CHAPTER 160, LAWS OF KENYA
AND
IN THE MATTER OF GRANT OF LETTERS OF ADMINISTRATION INTESTATE
AND
IN THE MATTER OF AMENDMENT OF THE SCHEDULE OF DISTRIBUTION**

**IN THE MATTER OF
JANE WANJIRU WAHOMÉ 1ST PETITIONER
JULIET WAIRIMU WAHOMÉ 2ND PETITIONER**

RULING

1. The Petitioners/applicants have applied through a Summons for amendment of certificate of confirmation of grant dated 12/09/2024 for orders that;
 - i. Spent.
 - ii. The honourable court be pleased to amend and /or rectify the schedule attached to the certificate of confirmation of grant dated 08/03/2023 and thereby add and/or include additional assets of the estate of the deceased, namely;
 - a. Motor Vehicle Caterpillar Reg No KHMA026Q.
 - b. Motor Vehicle Mitsubishi Fuso Reg. No KCH643T.



- c. Motor Vehicle Toyota Pick-up Reg No KCD050Y.
- d. Equity Bank Accounts; 05101XXXXXXXX- Kshs 78,413.55.
123016XXXXXXXX – Kshs 22,312.23
123029XXXXXXXX -Kshs 4,626.96
123016XXXXXXXX – Kshs 20,140.55
- e. Equity Bank Shares; Safaricom – 1,000 Shares
Barclays – 2,000 SHARES
Equity Group Holdings- 2,000 Shares
Nairobi Securities Exchange- 800 Shares
Cooperative Bank – 2,400 Shares
- f. Cooperative Bank Accounts; 011484XXXXXXXX – Kshs 2,839,896.09
- g. Family Bank Shares- Acc No 999XXXXXXXX- 2,806 Shares
- h. Kingdom Securities – 2,940 Shares.

Which were inadvertently omitted and/ or left out during the petition and confirmation of grant.

- iii. Consequent to prayer 2 herein being granted, the honourable court be pleased to distribute the said asset, to and in favour of the petitioners/applicants herein and the rest of the beneficiaries, in a similar manner to the other assets contained and/ or captured in the schedule at the foot of the certificate of confirmation of the grant issued on 08/03/2023.
 - iv. Pursuant to prayer 3 hereof, the certificate of confirmation of grant herein, be certified and confirmed.
 - v. Costs of the application be borne by the estate of the deceased.
 - vi. Such further and/ or orders be made as this honourable court may deem fit and expedient.
2. The application is premised on sections 47, 74, and 83(g) of the *Law of Succession Act*, rules 49, 59, 63, and 73 of the *Probate, and Administration Rules*, inherent powers of the court, and articles 2(2), 20(1), 48 and 159(2)(d) of the *Constitution*, 2010.
 3. The application is based on the grounds set out on the face of the application and supporting affidavit of Jane Wanjiru Wahome sworn on 12/09/2024.
 4. In essence, the applicants stated that, they discovered other assets of the deceased after the grant of letters of administration intestate was issued to the petitioners /applicants herein on 11/05/2022, and confirmed and a certificate of confirmation of grant was duly issued on 08/03/2023.
 5. The assets which were so discovered were neither reflected in the schedule of assets of the deceased nor distributed.
 6. The discovery of the said assets made this application necessary for complete distribution of the estate of the deceased.



7. Failure to reflect and/ or capture the said assets is bound to disinherit the estate of the deceased. Besides, no transactions and/or dealings can be carried out and/ or undertaken on the said asset until and unless they are made part of the estate and accordingly distributed to the dependants.
8. In the circumstances, they claim that rectification and/ or variation is imperative. Unless the certificate of confirmation of grant is amended, the administration and distribution of the estate of the deceased shall be prejudiced and/or hampered.
9. The petitioners contend that the instant application should in the interest of justice be allowed ex debito justitiae as the estate of the deceased will not suffer any prejudice whatsoever and the application has been made timeously and without unreasonable delay.

Analysis and Determination

10. This court has considered the application dated 12/09/2024.
11. The application before the court is made as a request for amendment of the Certificate of confirmation of grant. But, its true nature is a review which inherently includes identifying and incorporating all the assets of the deceased and distributing them to the dependants. Such application cannot be carried through the limited procedure for rectification of grant under section 74 of the [Law of Succession Act](#). It takes the robustness of the procedure for confirmation of grant where all parties should attend to confirm the assets and the mode of distribution especially where the latter is not in equal shares or is disputed. The procedure should also be capable of dealing with any third party claims on the additional or discovered assets. It is this serious.
12. However, the Application is not opposed and distribution is in equal shares which is in perfect harmony with the principle of equality. Therefore, it is proper to grant the orders on the following terms:
 - i. The assets listed below are estate property;
 - a. Motor Vehicle Caterpillar Reg No KHMA026Q.
 - b. Motor Vehicle Mitsubishi Fuso Reg. No KCH643T.
 - c. Motor Vehicle Toyota Pick-up Reg No KCD050Y.
 - d. Equity Bank Accounts; 0510190988828- Kshs 78,413.55.
12301XXXXXXXXX – Kshs 22,312.23
12302XXXXXXXXX -Kshs 4,626.96
12301XXXXXXXXX – Kshs 20,140.55
 - e. Equity Bank Shares; Safaricom – 1,000 Shares
Barclays – 2,000 Shares
Equity Group Holdings- 2,000 Shares
Nairobi Securities Exchange- 800 Shares
Cooperative Bank – 2,400 Shares
 - f. Cooperative Bank Accounts; 01148XXXXXXXXX – Kshs 2,839,896.09
 - g. Family Bank Shares- Acc No 999XXXXXXXXX- 2,806 Shares



- h. Kingdom Securities – 2,940 Shares.
 - ii. The schedule attached to the certificate of confirmation of grant dated 08/03/2023 be amended and /or rectified and thereby add and/or include additional assets of the estate of the deceased listed in (i) above.
 - iii. The assets be distributed as per the order made on 6.3.23 to dependants in equal shares, and the shares of the minors to be held in trust by the petitioners until they attain majority age.
 - iv. Certificate of confirmation to be issued accordingly.
 - v. No order as to costs.
13. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS
2ND DAY OF DECEMBER, 2024.**

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F. GIKONYO M

JUDGE

In the presence of: -

- 1. Ms. Mirei for petitioners
- 2. Nyangaresi C/A

