



REPUBLIC OF KENYA



**In re Estate of Philip Nzoka (Deceased) (Succession Cause  
85 of 2009) [2021] KEHC 9819 (KLR) (5 March 2021) (Ruling)**

Neutral citation: [2021] KEHC 9819 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 85 OF 2009**

**JN ONYIEGO, J**

**MARCH 5, 2021**

**IN THE MATTER OF THE ESTATE OF PHILIP NZOKA (DECEASED)**

**MARY SYOVINYA PHILIP..... 1ST APPLICANT**

**DANIEL MUTIA PHILIP ..... 2ND APPLICANT**

**RULING**

1. The grant herein relates to the estate of Philip Nzoka (deceased). It was confirmed on 5<sup>th</sup> July, 2010 and rectified on 27<sup>th</sup> February, 2018. The estate was shared out as follows;
  - i. Plot No. 2 Mkomani scheme (1/9) to Mary Syovinya Phillip
  - ii. Plot No. 115 Kitui to:
    - (a) Malili Phillip, Tony Nzoka Kioko, Patrick Nzilu Phillip, Wambua Phillip, Daniel Mutia Phillip and Joyce Kioko at a share of 1/9 each.
    - (b) Joseph Tumbo Nelson, Norman Kioko Nelson, Nicholas Maingi Nelson, and John Kakai Nelson 1/9 in equal shares
    - (c) Phillip Musyoki and Nelson Nzoka 1/9 in equal shares.
2. Subsequently, vide summons for rectification of grant dated 18<sup>th</sup> January, 2021, the applicants (administrators) sought orders that the said grant be further rectified and estate be distributed amongst the beneficiaries as per the schedule of distribution in the affidavit of Mary Syovinya Philip.
3. In the affidavit in support of the application sworn on 18<sup>th</sup> January 2021, by the applicants (administrators) jointly, they averred that while exercising their administration duties, they realized that there was need to distribute the estate in accordance with the sizes and actual areas the beneficiaries currently occupy and have occupied for a long time hence the need to maintain the old boundaries. Secondly, that there was no provision for access roads.
4. In the proposed new distribution arrangement, the estate is to be shared out as follows;



- i. Plot no. Mkomani scheme to Mary Syovinya Phillip
- ii. Kyangwithya/Tungutu/115.
  - (a) Tony Nzoka Kioko- 0.343 Ha
  - (b) Daniel Mutua Phillip – 0.103 Ha
  - (c) Malili Philip – 0.124 Ha
  - (d) Wambua Phillip – 0.0558Ha
  - (e) Joseph Tumbo Nelson, Norman Kioki Nelson, Nicholas Maingi Nelson and John Kakai Nelson-0.102 Ha jointly
  - (f) Patrick Nzilu Philip- 0.103 Ha
  - (g) Joyce Kioko -0.0613 ha
  - (h) Phillip Musyoki Nelson Nzoka – 0.1438 Ha jointly and
  - (i) access road – 0.1014 Ha
5. During the hearing, Mr Nzioka counsel appearing for the applicant adopted the averments contained in the affidavit in support of the application. I have considered the application herein and the affidavit in support. The application is unfortunately filed for rectification of the grant without quoting any specific provision. However, failure to quote the relevant provision is not fatal.
6. It is trite law that rectification proceedings are filed under section 74 of the Succession Act which provides that errors may be rectified by a court if it involves; names and descriptions or in setting out the time and place of the deceased's death or the purpose in a grant.
7. The issue at hand is partly an error by not providing for an access road and secondly, review and amendment of the grant by redistributing the estate to fit old boundaries as per the current beneficiaries' occupation.
8. Although the best procedure would have been to apply for review and amendment under order 45 of the Civil Procedure Rules pursuant to rule 63 of the probate and administration rules, I will seek refuge under Article 159 (2)(d) of the Constitution which provides that courts should not determine matters based on undue technicalities. For those reasons, I will allow the application for review and amendment of the grant subject to the physical appearance of beneficiaries to confirm their consent for redistribution of the estate considering that their original shares have been affected.
9. Accordingly, it is hereby directed that the beneficiaries do appear in court on a date convenient to them to confirm the proposed new mode of distribution.

**DATED SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5<sup>TH</sup> DAY OF MARCH 2021.**

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**J. N. ONYIEGO**  
**JUDGE**

