



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 40 OF 2010**  
**IN THE MATTER OF THE ESTATE OF MUTHENGI TAITA (DECEASED)**

**RULING**

1. Before this court for determination is the chamber summons dated **13<sup>th</sup> August 2020** by which the Administrators of the estate of the Deceased namely **ALICE KULA MUTHENGI** and **DUNCAN MUINDE MUTHENGI** seek the following orders:-

**“1. THAT the certificate of confirmation of Grant issued by this court on 27<sup>th</sup> May 2015 be amended in terms of the draft amended certificate of confirmation of grant attached to the supporting affidavit of ALICE KULA MUTHENGI and DUNCAN MUINDI MUTHENGI.**

**2. THAT costs of this application be in the cause.”**

2. The summons which was premised upon **Rules 49** and **73** of the **Probate and Administration Rules** was supported by the Affidavit of even date sworn by the two Administrators.

3. One of the beneficiaries to the estate **KAVILI MUTHENGI** filed a Replying Affidavit dated **8<sup>th</sup> June 2021** opposing any amendments to the confirmed Grant. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated **3<sup>rd</sup> August 2021** whilst the Respondent relied upon his written submissions dated **6<sup>th</sup> October 2021**.

**BACKGROUND**

4. This Succession Cause relates to the estate of **MUTHENGI TAITA** (hereinafter ‘the **Deceased**’) who died Intestate on **15<sup>th</sup> September 2009**. A copy of the Death Certificate Serial No. **170752** is annexed to the Petition for Grant of Letters of Administration Intestate.

5. Following the demise of the Deceased the two Applicants filed a Petition dated **15<sup>th</sup> January 2010** seeking to be issued with letters of Administration. In the Affidavit in support of the Petition, the following were named as Survivors of the Deceased and beneficiaries to his estate:-

- a) Alice Kula Muthengi – Wife
- b) Charles Mwanze Muthengi – Son
- c) Jones Kavili Muthengi – son
- d) Samuel Muthengi – son
- e) Alexander Mwema Muthengi – son
- f) Esther Ndua Muthengi – daughter
- g) Duncan Muinde Muthengi – son
- h) Bjorn Mbiti Muthengi – son

i) **Martin Mutisya Muthengi – son**

6. The Assets comprising the estate of the Deceased were listed as follows:-

a) **L.R. Mutonguni/Mithini/1471, 342 and 1469.**

b) **L.R Mutonguni/Kauwi/2583**

c) **Kitui Municipal Plot 4096/167**

d) **Kitui Council Plot No. 25B**

**Tulia Market – Kitui District**

e) **A/C No. 0124xxxxxxxx National Bank Ltd – Kitui Branch.**

7. Following this Petition letters of Administration Intestate were issued to the two Applicants on **7<sup>th</sup> June 2010**. The Applicants thereafter filed a summons for confirmation of Grant dated **26<sup>th</sup> September 2012**. The Grant was duly confirmed and a certificate of confirmed Grant was issued in the name of two Applicants on **27<sup>th</sup> May 2015**.

8. The Applicants have now filed the present summons seeking to amend the certificate of confirmed Grant. The Applicants states that it has come to their attention that some of the beneficiaries to the estate were left out in the distribution of the funds held in the account of the Deceased. That some beneficiaries were also not included in the distribution of business and land comprising the estate of the Deceased.

9. It was further stated that the name of one of the beneficiaries **Esther Nduu Muthengi** was misspelt. The Applicants annexed to their summons a consent dated **13<sup>th</sup> August 2020** signed by all the beneficiaries save for the Respondent.

10. In opposing the summons to amend the Grant, the Respondent argues that the Grant was obtained without his participation and alleges that the same was obtained fraudulently. The Respondent claims that the Deceased did not die Intestate but that he left a written Will. Finally, the Respondent submitted that the proposed changes cannot be effected through a rectification /amendment of the Grant. He urges the court to dismiss this summons entirely.

#### **ANALYSIS AND DETERMINATION**

11. I have considered the summons before this court, the Replying Affidavit filed by the Respondent as well as the written submissions filed by both parties.

12. **Section 74 of the Law of Succession Act, Cap 160, Laws of Kenya** provides for the circumstances in which a Grant may be rectified as follows:-

**“Errors in names and description, or in setting out the time and place of the deceased’s death, or the purpose of in a limited Grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered or amended accordingly.”**

13. It is manifest that **Section 74** provides for rectification of minor errors, omissions and/or mistakes in a Grant. It cannot be utilized to make sweeping and/or fundamental changes to a Grant.

14. In **ESTATE OF MAKHOHA NYILISI MUSA (Deceased) [2020]eKLR** the Court held as follows:-

**“The applicant herein seeks that the certificate of confirmation of grant be amended to reflect or accord with their proposed mode of distribution, which introduces two new beneficiaries, who were initially not part of the proceedings. As stated above, such an amendment goes to the core of the distribution, and the same cannot, therefore, be effected through an amendment of the certificate of confirmation of grant.**

**In an upshot, I find that the application is neither well founded nor properly conceived, and I hereby proceed to dismiss the same, for the reasons given.” (own emphasis)**

15. **Section 74** provides for superficial changes to a Grant. Changes which are fundamental and alter the core of the document cannot be effected by way of rectification.

16. In this case the Applicants are proposing to include new assets, and to re-distribute the entire estate. This are not superficial changes. The Administrators cannot purport to re-distribute the estate under the guise of rectification.

17. In the premises this application for amendment of Grant is misconceived. The proper way to effect the desired changes is to apply for the original Grant to be revoked and then to be re-issued in the desired terms. As such, the application fails.

18. I note that the Respondent has raised critical issues for determination i.e. his non-involvement in the Succession process and the question of whether or not the Deceased left a written will. He has prayed that the Grant issued to the Administrators herein be revoked. The Respondent is at liberty to file a summons for revocation of Grant if he wishes to pursue these claims.

19. Finally I find that the summons dated **13<sup>th</sup> August 2020** is bad in law. The same is dismissed in its entirety. This being a family matter I make no orders on costs.

**DATED IN NAIROBI THIS 3<sup>RD</sup> DAY OF DECEMBER, 2021.**

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**MAUREEN A. ODERO**

**JUDGE**