



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS - FAMILY DIVISION
SUCCESSION CAUSE NO. 310 OF 2002
PUBLIC TRUSTEE ADMINISTRATION CAUSE NO. 733 OF 2002
IN THE MATTER OF THE ESTATE OF KIARIKI MUTURI
(DECEASED)

RULING

1. Vide the Summons dated **9th October 2024** the application herein seeks review of the **Certificate of Confirmation of Grant issued to the Public Trustee on 17th October 2022**, so as to include **Land Parcel Number LARI/KIRENGA/599**, which was inadvertently omitted from the schedule of assets at confirmation.
2. The application is brought under **Rule 45(1) of the Civil Procedure Rules**, as read with **Rule 63 of the Probate and Administration**. It is supported by the affidavit of **Philip K. Cheruiyot**, Assistant Public Trustee, sworn in support thereof.
3. The grounds advanced are that:
 - a) **Land Parcel No. LARI/KIRENGA/599** was inadvertently left out;

- b) The beneficiaries had informed the Public Trustee that the property had already been distributed and titles issued;
- c) Subsequent investigations indicate that the said titles were cancelled, and the property reverted to the name of the deceased.
4. The Assistant Public Trustee proposes that the schedule of distribution be reviewed to include the said parcel and distributed as follows:

Immovable Property

a) L. R. No. Lari/Kirenga/505

To be shared equally among the following beneficiaries absolutely:

- **1st House:**

Estate of Kamau Kiariki

Estate of Murango Kiariki

Estate of Kihati Kiariki

- **2nd House:** Peter Murango Kiariki
- **3rd House:** Estate of Murango Kiariki 'C'
- **4th House:** Estate of Murango Kiariki 'B'
- **5th House:** Stephen Kimani Kiariki

(b) Land Parcel No. Lari/Kirenga/599

- **0.608 Hectares** to be transferred to Elizabeth Njeri Mwangi
- Estate of Kamau Kiariki - **0.274 Hectares**
- Estate of Murango Kiariki 'A' - **0.274 Hectares**
- Estate of Kihati Kiariki - **0.274 Hectares**
- Estate of Murango Kiariki 'C' - **0.274 Hectares**
- Stephen Kimani Kiariki - **0.274 Hectares**
- Estate of Janet Kanugu Murango - **0.274 Hectares**
- Gicheru Kiariki - **0.274 Hectares**

5. The court notes that no objection has been filed to the application.

DETERMINATION

6. The sole issue for determination is Whether sufficient grounds have been established to warrant review of the Certificate of Confirmation of Grant issued on 17th October 2022 to include **Land Parcel No. LARI/KIRENGA/599.**
7. Under **Rule 63 of the Probate and Administration Rules**, certain provisions of the **Civil Procedure Rules**, including **Rule 45** on review, are applicable to succession proceedings.

Rule 45(1) of the Civil Procedure Rules allows review where:

- There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge at the time the order was made; or
 - There is a mistake or error apparent on the face of the record; or
 - For any other sufficient reason.
8. The courts have consistently held that omission of estate property from a certificate of confirmation constitutes a proper ground for review. In **re Estate of Gathungu Gathungu (Deceased) [2019] eKLR**, the High Court held that where an asset of the estate is inadvertently omitted at confirmation, the proper remedy is review or rectification, not revocation of the grant.
9. Similarly, **In re Estate of Kamau Kiarie (Deceased) [2018] eKLR**, the court observed that review is available in succession causes where new material facts emerge showing that an estate asset was left out at confirmation, provided no prejudice is occasioned to beneficiaries.
10. Further, in **Francis Origo & another v Jacob Kumali Mungala [2005] eKLR**, the Court of Appeal affirmed that the purpose of review is to correct an error or omission so as to give effect to the true intention of the court and to meet the ends of justice.

11. In the present case, the evidence on record demonstrates that **Land Parcel No. LARI/KIRENGA/599** formed part of the deceased's estate but was omitted from the certificate of confirmation due to the belief, conveyed by the beneficiaries, that the property had already been distributed.
12. Subsequent investigations revealed that the titles arising therefrom were cancelled and that the property reverted to the name of the deceased. This constitutes new and important matter that was not within the knowledge of the Public Trustee at the time of confirmation. The omission is therefore neither deliberate nor fraudulent, but an inadvertent error capable of correction through review.
13. In the circumstances, this court is satisfied that the application meets the threshold under **Rule 45(1)** and that it is in the interest of justice to allow the review so that the certificate of confirmation reflects the complete estate of the deceased.
14. Accordingly, the court makes the following orders:
 1. The summons for review dated 9th October 2024 is hereby allowed.
 2. The Certificate of Confirmation of Grant issued on 17th October 2022 is hereby reviewed to include **Land Parcel No. LARI/KIRENGA/599**.

3. The said parcel shall be distributed in accordance with the schedule proposed by the Public Trustee and set out in this ruling.
4. An amended Certificate of Confirmation of Grant reflecting the reviewed distribution be issued forthwith.

It is so ordered.

DATED AND DELIVERED at NAIROBI this 15th Day of JANUARY 2026

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E.K. OGOLA
JUDGE

No Appearance..... for
the Applicant
Gisiele.....
Court Assistant.