



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2942 OF 2008

IN THE MATTER OF THE ESTATE OF ZIPPORAH WANJIRA

MACHARIA (DECEASED)

**SAMUEL KIMEMIA MACHARIA 1ST
APPLICANT**

**JOHNSON KAHIGA MACHARIA 2ND
APPLICANT**

**LUCY NDUTA MACHARIA 3RD
APPLICANT**

**CECILIA WAIRIMU KAMBO 4TH
APPLICANT**

-VERSUS-

**AMOS NGURE WANJIRA 1ST
RESPONDENT**

**CHARLES CHEGE MACHARIA 2ND
RESPONDENT**

**WILSON MWANGI 3RD
RESPONDENT**

**ANTONY KARUOYA MACHARIA 4TH
RESPONDENT**

RULING

1. The application before the court is dated 16th December 2022. The applicants pray for the following:

a) THAT the grant of letters of administration intestate made on the 18th November 2018, rectified on 6th July 2021, be and is hereby

revoked in particular for the allocation of properties, namely Ruiru/Kiu/Block 13/558, Eastleigh sec III/940, and Eastleigh sec III 945 for the absolute proprietorship to Siphon Anton Ngigi (deceased), the 1st and 2nd Respondents.

b) THAT the said grant of letter of administration intestate made on the 18th November 2018 be further rectified to the effect that the properties, namely Ruiru/Kiu/Block 13/558, Eastleigh sec III/940 and Eastleigh sec III/945, be sold and the proceeds shared equally amongst all the beneficiaries.

c) THAT the share of Siphon Anton Ngigi (now deceased) in the estate be allocated to Cecilia Wairimu Kambo.

2. The application was based on the grounds set out therein and the supporting affidavit of the 3rd and 4th applicants, the deceased daughters.
3. The applicants deposed that vide the Court's Ruling dated 18th June 2018, the court held that the estate of the deceased be distributed in terms of paragraph 8 of the affidavit sworn by Samuel Kimemia on 7th February 2017, from property No. 2 to No. 27. On 3rd March 2021, the 3rd applicant filed a Summons for Rectification of Grant of letters of Administration praying that the grant be amended to remove the name of Zipporah Wanjira Haizal as joint owner of the parcel of land known as

Loc14/Ruiru/T.149. On 6th July 2021, the application was allowed by consent of the parties.

4. According to the applicants, the rectified grant of letters of administration issued on 6th July 2021 allocated Ruiru/Kiu/Block 13/558, Eastleigh sec III/940, and Eastleigh sec III 945 to Siphon Anton Ngigi (deceased), the 1st and 2nd respondent, to the exclusion of the other beneficiaries. The applicants pray that these aforementioned properties be sold and the proceeds be divided equally amongst the beneficiaries.
5. Further to this, the applicants pray that the properties issued to the late Siphon Anton Ngigi be transferred to his wife Cecilia Wairimu Kambo.
6. The 3rd respondent filed an affidavit in support of the application.
7. The other parties did not object to the application.

Determination

8. I have read and considered the application. According to the applicants, the administrators have failed to maintain Ruiru/Kiu/Block 13/558, and it is on the verge of being closed down by the county government of Kiambu. Therefore, the grant of letters of administration should be revoked. The law on revocation of grant is Section 76 of the Law of Succession Act. It stipulates as follows:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on

application by any interested party or of its own motion—

(a)that the proceedings to obtain the grant were defective in substance;

(b)that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c)that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d)that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i)to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii)to proceed diligently with the administration of the estate; or

(iii)to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or

***account which is false in any material particular; or
(e)that the grant has become useless and inoperative through subsequent circumstances.”***

9. Further to this, the applicants have prayed for the mode of distribution of the estate be rectified to the effect that the properties, namely Ruiru/Kiu/Block 13/558, Eastleigh sec III/940 and Eastleigh sec III/945, be sold and the proceeds shared equally amongst all the beneficiaries. The law on rectification is Section 74 of the Law of Secession Act and Rule 43(1) of the Probate and Administration Rules:

10. Section 74 reads as follows:-

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

11. Rule 43(1) further stipulates that:-

“43(1) Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names of descriptions of any person or thing or as to the time or place of the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such

rectification through the registry and in the cause in which the grant was issued.”

From the aforementioned provisions, rectification is allowed so as to correct a misdescription of a property or to correct a name which has not been fully or properly described in the Grant.

12. The applicants pray that the mode of distribution be amended. It would be imprudent to seek rectification of the certificate of confirmation of grant. Such a change is fundamental, not superficial. It goes to the core of the distribution. It cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant.

13. Furthermore, there is no tangible reason to revoke the grant in its entirety.

14. This Court is clothed with jurisdiction to issue orders that will meet the ends of justice. Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

15. From the foregoing, I hereby allow the application dated 16th December 2022, and I make the following orders:

a) THAT the Certificate of Confirmation of Grant issued on 12th November 2018 and rectified on 6th July 2021 be further rectified in the following terms:-

- i. Ruiru/Kiu/Block 13/558, Eastleigh sec III/940 and Eastleigh sec III/945, be sold, and the proceeds shared equally amongst all the beneficiaries.**
- ii. The share of the estate bequeathed to the late Siphon Anton Ngigi be transferred to his surviving widow, Cecilia Wairimu Kambo.**

b) THAT costs be in the cause.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 20th day of January
2026**

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E.K. OGOLA
JUDGE

In the presence of:

Mr. Kalifa holding brief Githinji

M/s Ashena for the 1st -
5th Applicants

Gisiele

Muthoni

.....Court Assistant

ORIGINAL