



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS - FAMILY DIVISION

SUCCESSION CAUSE NO. 2539 OF 2012

IN THE MATTER OF THE ESTATE OF GIKORI KARUNGU
(DECEASED)

SALOME RUGURU KINUTHIA..... 1ST
OBJECTOR

PETER NJOROGE KAGO..... 2ND
OBJECTOR

VERSUS

JAMES KINUTHIA KAMAU.....1ST
RESPONDENT

PATRICK KINUTHIA KIMANI..... 2ND
RESPONDENT

JUDGMENT

1. This judgment relates to two summons on record, namely:
 - a) The Summons for Rectification and/or Revocation of Grant dated 19th July 2021, filed by the 1st and 2nd objectors, who are grandchildren of the deceased; and
 - b) The Summons for Revocation of Grant dated 14th June 2024, filed by Loise Wanjiku Roloporora, Lucy Njoki Munga, Michael Mepukori Saita and Teresia Muthoni, also grandchildren and great-grandchildren of the deceased.
2. These matters concern the confirmed letters of administration intestate issued to James Kinuthia Kamau and Patrick Kinuthia

Kimani over the estate of Gikori Karungu (deceased), confirmed on 24th September 2014, rectified on 28th June 2017, and further rectified on 13th June 2018.

3. The deceased's estate comprises an asset, namely **Land Parcel No. DAGORETTI/RUTHIMITU/348**.
4. It is common ground that the deceased had two wives, namely:
Ruth Wanjiku Gikori (first house); and
Salome Ruguru Gikori (second house).
5. At confirmation, the land was divided into three portions, namely:
5½ acres for the first house;
5½ acres for the second house; and
1.67 acres, which had been given by the deceased to his sister during his lifetime.

The Summons dated 19th July 2021

6. The 1st and 2nd objectors contend that although the grant was rectified on 28th June 2017 for the limited purpose of adjusting distribution of the first house's share, the extracted rectified grant went beyond what the court had sanctioned.
7. They allege that the rectified grant unlawfully altered the distribution of the second house's 5½ acres, that beneficiaries originally listed in the confirmed grant of 24th September 2014 were removed, and a stranger to the estate was introduced. That these changes were effected without consent, without court sanction, and fraudulently.

8. They claim that respondents proceeded to subdivide land and threatened to dispose of it, thereby wasting the estate. They therefore seek revocation of the grant.
9. The 2nd respondent, a joint administrator, filed a response to the summons stating that the rectifications of 2017 and 2018 were primarily undertaken to facilitate subdivision of the first house's portion, which has since been fully implemented and titles issued.
10. He contends that the rectified grant contains errors affecting the second house, including omission of beneficiaries named in the confirmed grant of 24th September 2014, and introduction of an unknown third party referred to as *Njuguna*.
11. That the errors were realized later, when the initial administrator for the second house, Joseph Ndwaru Ikori, had become ill and later died on 28th November 2020.

The Application dated 9th December 2023 and Summons dated 14th June 2024

12. The applicants herein, who are grandchildren and great-grandchildren of the deceased, contend that they were excluded from the confirmed and rectified grants.
13. That an agreement was reached with the 1st respondent for allocation of specific parcels to them, to be held in trust. They affirm that the 1st respondent breached that agreement by attempting to process titles solely in his name;

14. They claim that unless restrained, the administrators would continue subdividing and alienating the land to their detriment and therefore seek review, setting aside, revocation, and preservation orders.

DETERMINATION

15. The court establishes the following issues for determination:
 - a) Whether the rectifications of 28th June 2017 and 13th June 2018 introduced unauthorized and unlawful alterations.
 - b) Whether grandchildren and great-grandchildren of the deceased were improperly excluded.
 - c) Whether the grant should be revoked or rectified.
 - d) What is the appropriate mode of distribution of the second house's 5½ acres.
16. The **Law of Succession Act, Section 74**, provides that:

“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.”
17. **Rule 43(1) of the Probate and Administration Rules** mandates that an application for rectification under Section 74 must be by summons in the cause in which the grant was issued.

18. In *re Estate of the Late Kiptarus Ngisirei (Deceased)*, this Court emphasised that Section 74 and Rule 43 are restrictive, permitting rectification only for:

Errors in names and descriptions;

Errors as to the time or place of death; or

Correction of the purpose in a limited grant.

19. Where a party seeks to change the mode of distribution or address substantial issues beyond these limited errors, a review under the **Civil Procedure Rules (Order 44)** or a revocation application under **Section 76 Law of Succession Act** may be required.

20. Similarly, in *Mburia v Ileri & 2 others*, the High Court held that rectification cannot be used to effect fundamental alterations to a grant that change the mode of distribution, as such changes exceed the scope of Section 74 and Rule 43.

21. As for the issue concerning Fraud, Concealment and Revocation; a grant obtained by fraud or concealment of material facts can be revoked. In *Ndinya & another v Abuya & 3 others*, the High Court revoked and annulled grants where the administrator failed to disclose pending applications and procured the grant through concealment of material facts, a situation tantamount to fraud. This Court has also underscored that where material facts are concealed or false entries are made to procure a grant, the remedy is revocation of the grant under Section 76 of the Law of Succession Act.

22. The court hereby finds that the 2017/2018 Rectified Grant Contains Unauthorised Changes. The objectors established, and the 2nd respondent in his replying affidavit conceded, that the grant as extracted in 2017 and 2018 contains:

a) Unauthorised removal of beneficiaries originally listed in the confirmed grant of 24th September 2014 in respect of the second house, which contravenes the confirmed distribution; and

b) Inclusion of a purported third party (“Njuguna”) who is not a beneficiary of the estate.

23. These changes go beyond the limited scope of rectifiable errors under Section 74. They amount to substantive alterations of the mode of distribution and cannot be validated as simple errors in names or descriptions. This aligns with the principle in *Ngisirei and Mburia*, where fundamental redistribution was held to be beyond the court’s rectification jurisdiction under Section 74.

24. The extracted rectified grant is therefore legally deficient and must be corrected.

25. On the issue of the exclusion of Grandchildren and Great-Grandchildren, the subsequent applicants have demonstrated that they were excluded from the schedule of distribution despite being: *Grandchildren or great-grandchildren, whose parents (children of the deceased) are deceased*, thus stepping into the shoes of their parents as per established principles of

intestate succession under Section 39 and 41 of the Law of Succession Act (Cap 160).

26. Their exclusion amounts to a material error that cannot be classified as trivial. To deny them participation in the estate when their parents predeceased the deceased undermines the objectives of the Law of Succession Act to ensure just distribution among heirs.
27. On the issue of Limited Relief; Rectification, not Revocation of entire Grant; although the objectors allege fraud and seek revocation of the entire grant, the court must consider whether revocation is necessary or proportionate.
28. The first house's portion (5½ acres) has been fully subdivided and titles issued. There is no application before the court to cancel those titles, and to revoke the entire grant would unsettle completed lawful transactions and occasion great prejudice.
29. The issues pertain principally to the second house's share of 5½ acres and the alleged improper exclusion of beneficiaries and introduction of non-beneficiaries.
30. In such circumstances, and having regard to the precedents outlining the limited scope of rectification, this court will not revoke the entire grant. Rather, it will order rectification of the specific errors, consistent with Section 74 to the extent possible, and invoke Sections 40 and 76 of the Law of

Succession Act (Cap 160) as necessary to ensure just distribution in line with the deceased's family.

31. On the issue of distribution of the Second House's Share under section 40 of the Law of Succession Act, where a deceased person leaves multiple households in a polygamous marriage, distribution must respect the houses as units and cater for surviving spouses and children (and by extension, grandchildren where parents are deceased). The court must ensure equitable sharing among the rightful heirs of the second house.

32. Accordingly, the court makes the following orders:

a) The summons dated 19th July 2021 succeeds to the extent of rectifying the alterations made in the distribution of the second portion of five and a half acres earlier distributed to Joseph Ndwaru Ikori in trust for himself and 3 others, including the 1st Applicant, by removing the name of the 3 others and substituting them with the name of the 1st respondent and also indicating that that particular parcel was to be transferred to a stranger to the estate, one "Njuguna". The said distribution is hereby nullified.

b) The summons dated 14th June 2024 succeeds in so far as it seeks preservation of the estate and correction of material exclusions of Loise Wanjiku Roloporora, Lucy Njoki Munga, Michael Mepukori Saita and Teresia Muthoni in the Certificate of Confirmation of Grant dated

24th September 2014, rectified on 28th June 2017 and further rectified on 13th June 2018.

33. The confirmed grant dated 24th September 2014, as rectified on 28th June 2017 and 13th June 2018, is hereby rectified to:

- a. Remove all unauthorized entries pertaining to the second house's share, herein a "Mr Njuguna";
- b. Reinstate all beneficiaries as originally listed and as provided for in Certificate of Confirmation of grant dated 24th September 2014 consistent with Section 40 of the Law of Succession Act.

34. The 2nd respondent maintains that the deceased had allocated the second house's land inter vivos. That the beneficiaries have lived on and developed their respective portions for over 35 years and that the dispute is confined to the second house and does not warrant revocation of the entire grant.

35. He further proposes a redistribution of Joseph Ndwaru Ikori's unclaimed share among the surviving beneficiaries and descendants of deceased daughters.

36. The portion previously allocated to Joseph Ndwaru Ikori (deceased) of one and a half acres shall be redistributed among the beneficiaries and descendants of the second house in accordance with Section 40, adopting the equitable proposal advanced by the 2nd respondent, subject to the court's supervision as below:

- a) Catherine Wangari Kimani - One share
- b) Francis Kinuthia and Salome Ruguru Gikori - one share
- c) Naftali Ng'ang'a Githuku, Peterson Kinuthia Githuku, and Sarah Anne Wanjiku Ndung'u (beneficiaries of Sylvia Wanjiku Githuku (deceased) - one share
- d) Peter Njoroge (beneficiary of Kago Wambui Kago (deceased) - one share
- e) One share to be sold to offset legal, survey, subdivision and land rates costs.

37. Pending rectification and redistribution, all parties including the administrators and beneficiaries are restrained from selling, subdividing, alienating, processing titles, or dealing in any manner with DAGORETTI/RUTHIMITU/348.

38. Each party shall bear their own costs.

It is so ordered.

DATED AND DELIVERED at NAIROBI this 22nd Day of JANUARY 2026

.....
E. K. OGOLA
JUDGE

In the Presence of;

Mr. Macharia.....For
the Objector

Mr. Abuga.....For the
Respondent

Gisiele.....
Court Assistant

ORIGINAL