



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 114 OF 2008

IN THE MATTER OF THE ESTATE OF LATE FRIDAH WAIRIMU

(DECEASED)

RULING

1. Before me is a summons by the Administrator filed pursuant to Sections **47, & 74** of the **Law of Succession Act** and **Rule 43** of the Probate and Administration Rules.
2. The Applicant Seeks the Rectified Certificate of Confirmation of Grant issued by this Honorable Court on 17th July 2018 be Amended so that it can be in compliance with subsequent court findings and as per the endorsement of all the concerned Beneficiaries.
3. This Application is supported by the sworn Affidavit of **Peter Kamau Kariuki** and is anchored on the following grounds;
 - i. **That, this Honorable court has since pronounced itself in rulings that militate the Amendment of the Certificate of Confirmation of a Grant.**

- ii. **That, in order to bring this cause to a full conclusion it is important that all the Beneficiaries of the Estate of the Late RUTH WANJIKU KARIUKI (deceased) be involved and their approval/consent be recorded by the court so that the deceased's properties are shared by the Beneficiaries to avert any future Applications.**
 - iii. **That, a Succession Cause is not confined to a Petitioner and an objector only, but to all persons with clear and equational interests hence they need to be involved in the proceedings pertained to the cause.**
4. The Court issued directions on the disposal of the Application by way of filed written submissions but none of the parties complied.
5. It was the Applicants case that;
 - i. That the deceased in this cause was survived by the following adult Beneficiaries:
 - a) **Teresiah Nyambura Kariuki**- 81 years old.
 - b) **Peter Kamau Kariuki** -76 years old.
 - c) **Alice Wachera Kariuki**- 72 years old (deceased). Now represented by her son Peter Kamau Ng'ang'a.
 - d) **John Njane Kariuki** (deceased)-Now represented by his widow **Esther Nyokabi Njane**).
 - e) **Susan Wangui Kariuki** (now deceased) with no children.
 - ii. That the only available properties forming part of the deceased's assets which are available for Distribution to the Beneficiaries are as hereunder:–

- a. MAU SUMMIT MOLO BLOCK 5/378 (moto) measuring 50ft by 100ft.
 - b. MAU SUMMIT MOLO BLOCK 5/183 (moto) measuring 1/4 Acres.
 - c. MAU SUMMIT MOLO BLOCK 5/57 (moto) measuring Five Acres.
 - d. MOLO SOUTH/ IKUMBI Block 3/71 (moto) measuring 1.890 Hectare (app. 5 Acres).
- iii. That in order to bring this matter to a conclusion it is only fair that all the Beneficiaries be involved in these proceedings and their approval on the mode of distribution of the Deceased's be sought and the court do note their consent in court.
 - iv. That as the Petitioner/Administrator of the deceased's estate, he simply represent the Estate and not necessarily the Beneficiaries who are by law required to be participants in this cause in their own ways. He cannot make any unilateral decisions nor compromise the mode of Distribution with any person or any one Beneficiary without an Approval or written and signed consent of all the Beneficiaries to deceased's estate.
 - v. That the Law is very clear that the deceased's properties should be shared equally or equitably among the confirmed Beneficiaries of the Estate.

Items	Description of Properties	Names of Beneficiaries & their Identity Card No:	Shares
1	MAU SUMMIT MOLO Block 5/378(moto)	Teresiah Nyambura Kariuki, Peter Kamau	This Land be sold & Equal

	measuring 50ft by 100ft.	Kariuki, Peter Kamau Ng'ang'a and Esther Nyokabi Njane.	share of the proceeds after sale.
2	MAU SUMMIT MOLO Block5/5(moto)measuring 2.14Ha (Five Acres).	Teresiah Nyambura Kariuki, Peter Kamau Kariuki, Peter Kamau Ng'ang'a And Esther Nyokabi Njane	To be shared equally
3	MAU SUMMIT MOLO Block 5/183 (moto) measuring 0.53Ha (1.14 Acres).	Teresiah Nyambura Kariuki, Peter Kamau Kariuki, Peter Kamau Ng'ang'a And Esther Nyokabi Njane	To be shared equally
4	MOLO SOUTH/IKUMBII Block 3/71(moto) measuring Five Acres.	Teresiah Nyambura Kariuki, Peter Kamau Kariuki, Peter Kamau Ng'ang'a And Esther Nyokabi Njane	To be shared equally

- vi. That the Rectified Certificate of Confirmation of a Grant issued on 17th July 2018 did not reflect all the Beneficiaries of the Estate. It only reflected me and Esther Nyokabi Njane as the sole Beneficiaries of the Estate and the Other Beneficiaries were left out and their consents or approval was not sought or obtained.
- vii. That even as a Petitioner/Administrator, the law does not just give him a blank cheque to distribute the Estate's properties in a manner and to the persons of his own choice, without involving and seeking written and signed consent of all the adult Beneficiaries.

- viii. That in order to avoid to abide by the provisions of Rule 26 and 40 of the Probate and Administration Rules he now attach hereto a Consent of the Beneficiaries have accepted and consented to the proposed mode of distribution of the Deceased's Estate properties.
- ix. That he thereafter prays that the Rectified Certificate of Confirmation of a Grant be amended and the deceased's Estate's properties be distributed as above.
- x. That the correct position is that he did not include Susan Wangui Kariuki (deceased) as a Beneficiary of the Estate of the Late Ruth Wanjiku Kariuki (deceased) because she Susan Wangui Kariuki (deceased) passed on long before Ruth Wanjiku Kariuki and she had no survivors.
- xi. Teresiah Nyambura Kariuki is his biological sister and a Direct Beneficiary of the Estate of the late RUTH WANJIKU KARIUKI (deceased) hence she has all the rights to participate in this matter and urge for her share in the Estate of our Late Mother.
- xii. Alice Wachera Kariuki (deceased) is his late biological sister whose share
- xiii. in the Estate should go to her house through her own son PETER KAMAU NG'ANG'A to hold the share on his own behalf and on behalf of his siblings.
- xiv. The deceased had only four known and available assets mentioned in the schedule of Distribution and he challenged Esther Nyokabi Njane to produce documents of ownership of properties in the name of the deceased which she alleges he left out in the Application dated 9th January 2026.

- xv. That, it is incorrect to state that he left out other properties and the members Register of Moto Farmers Company is not an authority of ownership of any properties of the persons named herein.
- xvi. That Land Parcel No. MOLO SOUTH/IKUMBI Block 3/72 (motto) is not and was never a property of the deceased. This was and still is his own land which he personally purchased and I was issued with a Title Deed on 2nd December 1992. he cannot include it in this Estate because it does not belong to the deceased's Estate.
- xvii. That, Land Parcel No. MAU SUMMIT/ MOLO Block 5/191 (motto) is not and was not at any time a property of the Late RUTH WANJIKU KARIUKI (deceased). This is his own land which he bought and was issued with a Title Deed on 1st December 1993. He cannot include it as his late mother's properties.
- xviii. That Land Parcel No. MAU SUMMIT/ MOLO Block 5/379 (motto) is his own personal land and it has nothing to do with his late mother's properties. He was the one who purchased this land and was issued with a Title Deed on 1st February 1993. He could not and cannot include his own asset as an asset of his mother.
- xix. That, the Tribunal (Land Disputes Tribunal) could not distribute the deceased's estate, because this is a preserve of the probate court and its decision to allocate and distribute the deceased's properties including his personal properties to only Two Persons (himself and Esther Nyokabi Njane) has no basis and cannot be allowed to displace this court's Jurisdiction.
- xx. That, all the living Beneficiaries of the deceased's estate save for Esther Nyokabi Njane are active participants in the Application

dated 9th January 2026 and the court deserves to summon them and hear them out on the proposed mode of distribution.

- xxi. That, this Honorable court ordered the cancellation of all the Title Deeds issued to him and his wife. he was satisfied with that position and this is why they have to go to the drawing board to have the properties of the deceased re-distributed afresh to all the entitled Beneficiaries and this is why he brought this Application.
- xxii. That, he cannot be faulted of bringing all the Beneficiaries on Board otherwise litigation in this matter shall never come to an end if any one of them is not involved in this matter at this juncture.
- xxiii. That, he wholly agrees with paragraph 18 of the Replying Affidavit and he has done exactly what the court directed him to do.
- xxiv. That, by virtue of the order cancelling the Titles, it follows that the proprietorship thereof reverted to the names of the Late Ruth Wanjiku Kariuki making the present Application appropriate.
- xxv. That, for conclusive handling of this case it is only fair and just that the Application date 9th January 2026 be allowed.

Respondents Case

6. The Respondent in her sworn Affidavit dated 16th January 2026 contends that;
 - i. She is surprised the petitioner has at the end of the tail decided to include Susan Wangui Kariuki who predeceased the late Ruth Wanjiku Kariuki and left no children.
 - ii. She is equally surprised he has included Teresiah Nyambura Kariuki who together with Alice Wachera Kariuki had not participated in the sharing in of the deceased's properties and had even participated in

the Molo land dispute tribunal and did not express any interest in the said properties of the deceased.

- iii. The Applicant's statement that the Estate of the deceased comprised four assets is false.
- iv. she actively participated in the issues of the deceased's estate and had a case pending in the Molo land disputes tribunal.
- v. The petitioner has not involved any of his siblings in the Succession cause and she prays they be summoned by the court to state their stand as the petitioner's inclusion of the same is to avoid justice and to ensure he gets the share of the sisters' estate behind their backs.
- vi. The petitioner went to the Moto farm director's and converted my late mother in laws properties into his own names.
- vii. If indeed the applicant is honest, he could have included his sisters in the grant that was confirmed way back on 6th October 2008 and he distributed all the properties into his name.
- viii. The petitioner did transfer into his name three parcels of land namely: Molo / Ikumbi Block 3/72 (Moto), MAU SUMMIT/MOLO BLOCK 5/191 (Moto) and Mau Summit/ Molo Farm Block 5/379 (Moto).
- ix. The petitioner also transferred parcels Mau Summit/ Molo Farm block 5/183 (Moto) to his wife Lucia Njoki Kamau and parcel Mau Summit/ Molo Farm Block 5/378 (Moto) into the name of Samuel Nyakwara Mogusu.
- x. Due to the long litigation in the Tribunal and in court she accepted out of despair to enter into a consent on 17th July 2018 where the petitioner agreed she take parcels Molo / Ikumbi Block 3/71(Moto) and Mau Molo Farm block 5/183 (Moto).

- xi. The petitioner failed to release the title deeds for transfer and we did obtain an order forcing the petitioner to surrender the title deeds.
- xii. The petitioner failed to do so forcing us to file an application where the court ordered the Nakuru County Surveyor to subdivide the land and the OCS Sirikwa Police Station to provide the surveyor security.
- xiii. County surveyor did conduct searches before proceeding to the subdivision of parcel Mau Farm Block 5/378 (Moto) and Mau Summit/ Molo Farm block 5/183 (Moto) and discovered the same had been transferred to the petitioner's wife Lucia Njoki Kamau and the block 5/378 (Moto) to Samuel Nyakwara Mogusu.
- xiv. They did come to court seeking the petitioner to be summoned by the court and before appearing in court he filed the application dated 15th October 2024 seeking to stay the ruling dated 11th October 2024.
- xv. The court did in its ruling ordered the petitioner to surrender the title documents in for cancellation.
- xvi. The court its ruling and ordered the petitioner to list all deceased's properties for distribution.
- xvii. The Applicant had instead of listing all the deceased's properties, the applicant has only dealt with the properties agreed to transfer to me while failing to name all the other properties.
- xviii. In the interest of justice, the Applicant should first transfer the properties he had illegally transferred to his wife and one Samuel Nyakwara Mogusu namely parcels Mau Summit/ Molo Farm (Moto) Block 5/378 and Mau Summit/ Molo Farm block 5/183 (Moto) into the deceased's name.
- xix. The Applicant transferred the above two properties despite a consent that he had rendered in the same transferred to me.

- xx. She prays pray the Applicant to first comply with the court orders dated 11th
- xxi. October 2024 where the Land Registrar was ordered to cancel the two titles but which title deeds the Applicant has failed to return.
- xxii. The court do order all the properties of the deceased be listed for distribution not the four he conveniently mentions but conveniently forgets those he has transferred into his own name.
- xxiii. She vehemently oppose the application as it is a side-show meant to derail the conclusion of the cause herein.

Analysis and Determination

7. The issue at play is whether there is any merit in the summons to amend the certificate of confirmed grant ostensibly in militating the court's rulings?
8. On the 25th April 2025 this court dismissed the Applicants Application dated 15th October 2024 that was an attempt to vary a consent order dated on the 17th July 2018 and the instant Application equally seeks to vary the same consent order.
9. The Court further directed that the Administrator is free to make proposal for distribution of the (remaining assets) of the deceased to a logical and acceptable conclusion of this proceedings.
10. As a further clarification on (remaining assets) referred to in the ruling dated 25th April 2025 were assets introduced in that application that include;

- a) Molo Farm Block 5/56- measuring 5.1/2 acres
- b) Molo Farm Block 5/572- measuring ½ Acres
- c) Molo Farm Block 5/191- measuring 2 Acres
- d) Molo Farm Block 5/379- measuring 50 X 100 feet
- e) Ikumbi Block 3/72- measuring 5 Acres

11. It was the newly introduced assets that the court directed proof of ownership with proposal for distribution. However, the Applicant administrator in his application dated 9th January 2026 now contends that the following assents of the deceased are available for distribution;

- a) MAU SUMMIT MOLO BLOCK 5/378 (moto) measuring 50ft by 100ft.
- b) MAU SUMMIT MOLO BLOCK 5/183 (moto) measuring 1/4 Acres.
- c) MAU SUMMIT MOLO BLOCK 5/57 (moto) measuring Five Acres.
- d) MOLO SOUTH/ IKUMBI Block 3/71 (moto) measuring 1.890 Hectare (app. 5 Acres).

12. It is apparent that the Administrator/Applicant has now a few months down the road reverted back to the list of the deceased assets that formed part of the consent dated 17th July 2018. The Consent order is not subject to debate and as such cannot be relitigated.

13. I do further observe that Alice Wachera Kariuki (beneficiary) sought to be introduced to partake in the new mode of distribution proposed is

since deceased, Alice Wachera Kariuki never complained of being left out during her lifetime, the so identified representative Peter Kamau Ng'ang'a is a stranger to this succession and lack requisite authority to represent the estate of Alice Wachera Kariuki.

14. As for Teresiah Nyambura Kariuki she has signed the consent, but has not offered the court any explanation as to why she would stake a claim to inherit from her mother at this juncture and where she has been all this time. The court notes that she is currently 81 years old.
15. The equitable reliefs sought are premised on the Applicant moving the court with clean hands, the list of assets constituting the estate of the deceased cannot changing within months without explanation in a 'ping pong' fashion.
16. The court sadly view the Application as another attempt at delaying the enforcement of the orders of the court.
17. The Application dated 9th January 2026 is without merit and the same is dismissed.
18. As to whether the court should award costs, by dint of the persistent inequitable actions by the Applicant this court now finds basis to award costs to the Respondent.
19. Any party aggrieved with this ruling may move to the Court of Appeal. Leave of 45 days is hereby granted.

It is so ordered.

**Dated, Signed and Delivered at Nakuru
On this day of 26th Day of March, 2026.**

**S. Mohochi
JUDGE**