

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CASE NO. 233 OF 1994
IN THE ESTATE OF NGUYU MBITI (DECEASED)

BONIFACE MUTISYA
NGUYUPETITIONER

VERSUS

JOEL KIILU NGUYU1ST
RESPONDENT

PETER NZIOKA MBITI 2ND
RESPONDENT

PETER MUSYIMI MUTETI 3RD
RESPONDENT

PETER KALOKI MULILA 4TH
RESPONDENT

RULING

1. Before this court for determination are two applications.
2. The first application is one dated 30th June 2025 accompanied by the affidavit sworn by the Respondents. In it, the Respondents seeks that;
 - a. The court amends the rectified certificate of confirmation of grant issued on 14th November 2024 and a fresh certificate of confirmation of grant is issued;
 - b. The court be pleased to: -

- i. Indicate the full list of beneficiaries as heirs to the property Muvuti/Kaani/559.
 - ii. Indicate the respective shares of heirs for the property Muvuti/Kaani/559.
 - iii. Remove the name of Joel Kiilu Nguyu as a beneficiary as he is deceased and substitute it with that of Peter Kaloki Mulila.
 - c. The court invokes its inherent power and appoints the Deputy Registrar to execute the requisite transmissions forms to enable the beneficiaries of the estate to acquire titles to their shares.
3. The grounds in support of the application are that on 13th February 1996, the court issued a certificate of confirmation of grant for the deceased's estate which included properties Nos. Muvuti/Kaani/559 and Muvuti/Kaani/1311. Following confirmation of the grant, Muvuti/Kaani/1311 was transferred on 30th April 1996 to Boniface Mutisya Nguyu, Joel Kiilu Nguyu, Peter Nxioka Mbiti, Peter Musyimi Muteti, Peter Kaloki Mulila as trustees for the remaining beneficiaries. However, the grant erroneously excluded Phillip Kioko Wambua and Bernard Mutanda Kabili as beneficiaries of the estate. On 14th April 2008, the court issued a rectified certificate of confirmation of grant to Boniface Mutisya Nguyu which rectified certificate of confirmation of grant to include the names of Phillip Kioko Wambua and Bernard Mutanda Kabili.

4. The Respondents argue that the confirmed grant remained erroneous, as it still listed both properties for distribution among 11 beneficiaries, despite the fact that title for Muvuti/Kaani/559, had already been issued and transferred to Phillip Kioko Wambua, Peter Musyimi Mutevu, Bernard Mutinda Kabili, Joel Kiilu Nguyu, Peter Kaloki Mulili for themselves and to hold in trust for the remaining beneficiaries. A further rectification was made to remove property Muvuti/Kaani/1311, which had already been transmitted to its beneficiaries on 30th April 1996 and title issued on 6th May 1996 and was therefore removed from the description of properties. Additionally, Joel Kiilu Nyuyu, now deceased was to be substituted with Peter Kaloki Kiilu.
5. The respondents contend that the administrator failed to note that all beneficiaries were now all adults and it was erroneous to indicate that property Title Mavuti/Kaani/559 was held in trust rather than distribute according to each heir's share. They further argue that the court failed to remove the name of Joel Kiilu Nguyu (now deceased) and substitute it with that of Peter Kaloki Kiilu. Consequently, the rectified grant of 14th November 2024 still listed Mavuti/Kaani/559 as held in trust by certain beneficiaries. The respondent's state that the administrator has failed and or refused to administer the estate properly, leaving the matter unresolved for over 30 years. They urge the court to expedite the transmission process with the assistance of the

Deputy Registrar. They have attached a surveyor's report proposing the mode of distribution.

6. The application is opposed through a Replying Affidavit sworn on 14th October 2025. The Respondent argue that the delay in transferring Muvuti/Kaani/559 to its beneficiaries is due to several issues including; one of the registered trustees, Joel Kiilu Nguyu is deceased; the shares/measurements listed in the schedule of the rectified certificate of confirmation of the grant do not correspond with the actual measurements on the ground; and that the name of Peter Kaloki Kiilu does not appear in the schedule of distribution.
7. He further states that on 5th April 2024, he held a meeting with Bernard Mutinda Kabili and Peter Kaloki Kiilu at his advocate's office regarding the transfers. At the meeting, he surrendered copies of his KRA Pin Certificate, National ID card and coloured passport size photographs for the transfers process. The Respondents also submitted their documents. He states that at the same meeting, his advocate advised the 3rd & 4th respondents to follow up with his office to complete the transfers but they have failed to do so. He contends that the delay has been caused by the beneficiaries themselves, who are misleading the court by alleging that he has refused to effect the transfers to the beneficiaries. He emphasizes that only the registered

trustees of land Muvuti/Kaani/559 are responsible for effecting the transfers, and he is not one of the trustees.

8. In summary, the Petitioner on 18th December 2025 admitted that he does not oppose to the application dated 30th June 2025 save for the prayer seeking that the court invokes its inherent power and appoint the Deputy Registrar to execute the requisite transmission forms to enable the beneficiaries of the estate to acquire titles to their shares.

The 2nd Application

9. The second application for determination is the summons application dated 14th October 2025 filed by the Petitioner which seeks that;
- a. The certificate of confirmation of grant issued on 13th February 1996 and rectified on 7th April 2008 be nullified.
 - b. That the Land Title No. Muvuti/Kaani/1311 be reverted to the name of Nguyu Mbiti, the deceased in these proceedings.
 - c. The Land registrar, Machakos County be directed to cancel the transfers of Land Title No, Muvuti/Kaani/1311 made to the petitioner and the Respondents on 30th April 1996.
10. In his supporting affidavit, the petitioner states that the distribution captured in the schedule of the certificate of confirmation of the grant relates only to Land

Muvuti/Kaani/559 yet the estate of the deceased comprises of both land Muvuti/Kaani/559 and land Muvuti/Kaani/1311. He opposes that at the time of confirmation, land Muvuti/Kaani/1311 measuring 1.1ha was inadvertently not distributed/shared among the beneficiaries. He further states that on 30th April 1996, pursuant to the confirmation of made on 9th February 1996, land Muvuti/Kaani/1311 was wrongfully transferred jointly to him and the Respondents as trustees for the beneficiaries. He therefore prays that land Muvuti/Kaani/1311 be reverted to the name of the deceased for proper distribution to the beneficiaries, specifically to be shared by Mulekye Muluku and James Muange Musyoki.

11. On 18th December 2025, the Petitioner abandoned prayer 1 of his application and urged the court to grant prayers 2 and 3. The Respondents, on their part stated that they do not oppose the application, noting that the petitioner has not provided sufficient grounds for cancellation of the title.
12. For both applications, parties relied on the pleadings and affidavits filed in court.

Analysis and determination

13. From the two applications and the parties' positions, the following issues arise for determination: -

- a. **Whether the Certificate of Confirmation of Grant relating to the estate, particularly in respect of Land Parcel Muvuti/Kaani/559 should be interfered with**
- b. **Whether the current mode of administration and distribution of Land Parcel Muvuti/Kaani/559 is legally sustainable**
- c. **Whether the court should intervene to facilitate completion of administration of the estate, including execution of transfer documents**
- d. **Whether the transfer and registration of Land Parcel Muvuti/Kaani/1311 should be cancelled and the property reverted to the deceased for proper distribution**

Whether the Certificate of Confirmation of Grant relating to the estate, particularly in respect of Land Parcel Muvuti/Kaani/559, should be interfered with

14. The starting point is the legal framework governing rectification of grants. Under **Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules**, the court is empowered to rectify errors in grants, but only in limited respects such as names, descriptions or other clerical mistakes. This jurisdiction is narrow and does not extend to altering the substance of a

confirmed grant particularly with regard to distribution of the estate.

15. In the present case, the Respondents seek, inter alia, amendment that go far beyond clerical corrections. They request inclusion of a full list of beneficiaries, specification of their respective shares, removal of a deceased beneficiary and restructuring of the mode of distribution. These are substantive changes that touch the very core of the confirmed grant. Ordinarily, such relief would require an application for revocation or annulment under Section 76 of the Law of Succession Act, or alternatively, a fresh confirmation.

16. However, this matter presents exception circumstances. The estate has remained unresolved since 1996, with repeated partial rectifications that have failed to cure underlying defects. The record demonstrates a prolonged stalemate, with beneficiaries unable to obtain titles to their shares despite multiple court interventions. The court is therefore not merely confronted with a technical application for rectification but with the broader question of whether it should exercise its jurisdiction to finally settle the estate.

17. In this regard, Section 47 of the Law of Succession Act vests the court with wide jurisdiction to entertain any application and determine any dispute under the Act. Rule 73 of the Probate and Administration Rules further

preserves the inherent powers of the court to make such orders as may be necessary for the ends of justice. These provisions empower the court to go beyond the narrow confines of rectification where justice so demands.

18. Accordingly, while the application as framed exceeds the strict confines of rectification, this court is satisfied that it is properly seized of the jurisdiction to interrogate the confirmed grant and to make such orders as will bring finality to the administration of the estate. To decline jurisdiction on a technicality would only perpetuate the injustice that has characterized this matter for decades. The court therefore finds that the Certificate of Confirmation of Grant dated 14th November 2024 is amenable to interference not merely by way of rectification but through the court's broader jurisdiction to ensure lawful and complete distribution of the estate.

Whether the current mode of administration and distribution of Land Parcel Muvuti/Kaani/559 is legally sustainable

19. The next issue concerns the substance of the distribution of Land Parcel Muvuti/Kaani/559. The record shows that the property was transmitted to certain beneficiaries as trustees for the benefit of other. Such trust arrangements are recognized in succession proceedings and is typically justified where some beneficiaries are minors or

otherwise incapable of holding title in their own right. However, the Respondents have asserted and it has not been controverted that all beneficiaries are now adults. In these circumstances, the continued existence of a trust structure serves no legitimate legal purpose. Instead, it unjustifiably delays the vesting of proprietary interests in the beneficiaries and has contributed to the prolonged stagnation of the estate.

20. Section 83 of the Law of Succession Act, imposes a statutory duty on personal representatives to complete the administration of the estate and to distribute the assets to the rightful beneficiaries without undue delay. Retaining property under a trust arrangement decades after confirmation of the grant is inconsistent with this duty and undermines the principle of finality in succession proceedings.

21. Closely related to this issue is the proper identification of beneficiaries and their respective shares. The Respondents have sought the inclusion of a complete list of beneficiaries and specification of their entitlements supported by a surveyor's report. Given the inconsistencies between the certificate of confirmation and the actual position on the ground, it is evident that the current schedule of distribution is inadequate. Regularization is therefore necessary to ensure that the distribution reflect

the true entitlements of the beneficiaries and avoids further disputes.

22. The issue of the deceased beneficiary, Joel Kiilu Nguyu, must also be addressed within this context. It is a fundamental principle of law that a deceased person cannot hold or transmit property. His continued inclusion in the certificate of confirmation of grant renders the distribution legally defective. Importantly, the proposal to substitute him directly with another individual is unsupported by law. Upon the death of a beneficiary, his entitlement devolves to his estate and must be administered in accordance with the Law of Succession Act. Any person seeking to step into his place must do so as a duly appointed personal representative.

23. In light of the foregoing, the court finds that the current mode of administration and distribution of Land Parcel Muvuti/Kaani/559 is legally unsustainable. The trust structure has become obsolete, the list of beneficiaries requires regularization and the inclusion of a deceased beneficiary must be corrected in accordance with the law. Only by addressing these defects can the estate be properly administered and finality achieved.

Whether the court should intervene to facilitate completion of administration of the estate including execution of transfer documents

24. This court now turns to the question of whether it should adopt a more interventionist role in ensuring that the estate is finally distributed. The history of this matter reveals inordinate delay with the estate remaining undistributed for over thirty years. Although the parties have traded the net effect is that the beneficiaries have been deprived of the full enjoyment of their inheritance for an unreasonably long period. Such delay is contrary to the objectives of succession law, which seeks to secure timely transmission of property to those entitled.
25. Section 47 of the Law of Succession Act read together with Rule 73 of the Probate and Administration Rules, empower this court to make such orders as may be necessary to meet the ends of justice. Courts have consistently invoked these provisions to authorize court officials including the Deputy Registrar, to execute documents where parties have failed, refused or neglected to do so. At the same time, the court notes evidence of partial compliance by certain parties, including the submission of some documents for purposes of transfer. It would therefore be premature to immediately displace the role of the parties in the execution process.
26. In balancing these considerations, the court is persuaded that a conditional approach is appropriate. The parties should be afforded a final opportunity, within a specified timeframe, to execute all necessary documents to effect the distribution. Should they default, the Deputy Registrar will

be empowered to execute the requisite documents to give effect to the court's orders.

27. Such an approach preserves the primary responsibility of the parties while safeguarding against further delay. It strikes a balance between respecting party autonomy and ensuring that the administration of the estate is brought to a timely and lawful conclusion.

Whether the transfer and registration of Land Parcel Muvuti/Kaani/1311 should be cancelled and the property reverted to the deceased for proper distribution

28. The final issue concerns Land Parcel Muvuti/Kaani/1311 which was transferred in 1996 to certain individuals as trustees. The Petitioner contends that this transfer was erroneous, as the property was not properly distributed in the confirmed grant. He therefore seeks cancellation of the title and reversion of the property to the name of the deceased.

29. Ordinarily, the court must exercise caution when dealing with registered titles, given the principle of indefeasibility under Section 26 of the Land Registration Act. A certificate of title is prima facie evidence of ownership and can only be impeached on limited grounds, including fraud, misrepresentation, or illegality. However, it is now well settled that titles obtained pursuant to defective or

irregular succession proceedings are not immune from challenge. Where property is transmitted in a manner inconsistent with the confirmed grant, or where the grant itself is flawed, the court retains jurisdiction to intervene and correct the error in order to safeguard the integrity of the succession process.

30. In the present case, the transfer of Land Parcel Muvuti/Kaani/1311 is admitted by the Petitioner to have been inadvertent and inconsistent with proper distribution. Significantly, the Respondents do not oppose the prayer for cancellation. There is therefore no contest as to the impropriety of the transfer and no evidence has been presented of third-party interests that would complicate or prejudice cancellation.

31. In those circumstances and in the absence of competing claims, the court is satisfied that this is an appropriate case for the exercise of its jurisdiction to cancel the title and revert the property to the estate of the deceased. This will enable the property to be properly distributed in accordance with the law and the entitlements of the beneficiaries, thereby restoring order and legality to the succession process.

32. From the foregoing analysis and determinations, the court makes the following orders: -

- a. Land Parcel Muvuti/Kaani/559 shall not be held in trust, but shall be distributed directly to the beneficiaries.
- b. The administrator shall, within a period of 30 days, file in court a proposed mode of distribution for Land Parcel Muvuti/Kaani/559 that reflects all beneficiaries, and specifies their respective shares. This shall take into account the evidence on record, including the surveyor's report where applicable and appropriate.
- c. Upon ascertainment and approval of the full list of beneficiaries and their respective shares an amended/rectified certificate of confirmation of grant shall issue.
- d. The entitlement of Joel Kiilu Nguyu (deceased) shall devolve to his estate and shall only be transmitted upon production of a valid grant of representation in respect of his estate. Any purported substitution of the deceased beneficiary with an individual beneficiary is hereby declined for want of legal basis.
- e. The administrator and all beneficiaries are hereby directed to execute all necessary documents to effect the transmission of Land Parcel Muvuti/Kaani/559 within 20 days from the date of approval of the mode of distribution. In default of compliance within the stipulated period, the Deputy Registrar of this Court is hereby authorized to execute all requisite transfer and

transmission documents on behalf of any defaulting party to give effect to the distribution.

- f. The transfer and registration of Land Parcel Muvuti/Kaani/1311 effected on 30th April 1996 is hereby cancelled. The Land Registrar, Machakos County is directed to revert the title of Land Parcel Muvuti/Kaani/1311 to the name of Nguyu Mbiti (deceased).
- g. Land Parcel Muvuti/Kaani/1311 shall thereafter form part of the estate and be subject to lawful distribution in accordance with the Law of Succession Act.
- h. Given the nature of this matter and in order to promote harmony, each party shall bear their own costs.

Orders accordingly.

Dated, signed and delivered at Machakos this 9th day of April, 2026

RHODA RUTTO
JUDGE

In the presence of;

.....Petitioner

.....Respondent

Selina Court Assistant