



**Mutungi v Mutungi (Probate & Administration 429 of 2002)  
[2025] KEHC 3994 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3994 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
PROBATE & ADMINISTRATION 429 OF 2002  
MA ODERO, J  
MARCH 28, 2025**

**IN THE MATTER OF THE ESTATE OF CRISPUS MUTUNGI GICHUHI (DECEASED)**

**BETWEEN**

**MARY MUTHONI MUTUNGI ..... APPLICANT**

**AND**

**ANN WANJIKU MUTUNGI ..... RESPONDENT**

**RULING**

1. Before this Court is the Summons for review and Amendment of Confirmed Grant dated 23<sup>rd</sup> September 2024 by which the Applicant Mary Muthoni Mutungi seeks the following orders:-
  - “(1) That the Certificate of Confirmation of Grant issued on 19<sup>th</sup> October 2007 be reviewed and amended.
  - (2) That Title No. 1Aikipia Marmanet/1081 be re- distributed.
  - (3) That a caution registered against the Title No. Laikipia/Marmanet/1081 by Anne Wanjiku Mutungi be removed.
  - (4) That the costs of this application be in the cause.
2. The application which was premised upon Section 74 of the Law of Succession Act and Rules 43(1), 49 and 73 of the Probate and Administration Rules was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent Ann Wanjiku Mutungi filed a Replying affidavit dated 10<sup>th</sup> December 2024 opposing the application.



4. The matter was canvassed by way of written submissions. The Applicant did not file any submissions whilst the Respondent relied upon her written submissions dated 20<sup>th</sup> February 2025.

### **Background**

5. This Succession Cause relates to the estate of the late Chrispus Mutungi Gichuhi (hereinafter 'the Deceased') who died intestate on 29<sup>th</sup> October 2001. The Deceased was survived by two (2) widows Jane Wanja Mutungi And Mary Muthoni Mutungi and eleven (11) children.
6. The assets left behind by the Deceased included the following:-
  - (i) Laikipia/Marmanet/1081 - 5.02 Hectares
  - (ii) Laikipia/Marmanet/1083 - 4.05 Hectares
  - (iii) Laikipia/Marmanet/1876 - 2.02 Hectares
  - (iv) Nyandarua/Leshau Block 1/113
7. Following the demise of the Deceased Grant of Letters of Administration Intestate was on 9<sup>th</sup> July 2003 made to the two widows Jane Wanja Mutungi and Mary Muthoni Mutungi. The Grant was thereafter confirmed on 19<sup>th</sup> October 2007.
8. According to the Certificate of Confirmed Grant the parcel of land known as Laikipia/Marmanet/1081 was devolve to the Applicant Mary Muthoni Mutungi to hold 'in trust' for her children. The Applicant now seeks to have the certificate of confirmed Grant reviewed and amended to provide that Plot No. 1081 devolve entirely to the Applicant to enable her subdivide the land and sell off a portion in order to educate and provide for her children.
9. The Respondent Ann Wanjiku Mutungi who is one of the biological children of the Applicant opposed the application for review of the confirmed Grant.
10. In her replying affidavit the Respondent states that the beneficiaries had only consented to the sale of 2.5 acres out of Plot 1081 but they did not consent to having the entire parcel of land registered in the name of the Applicant as absolute owner.
11. The Respondent goes on to state that the Applicant has proceeded to subdivide Plot 1081 and unlawfully sold the same without the authority/consent of the other beneficiaries. Upon learning of this the Respondent lodged a caution against any further dealings in the said land. As a result the Applicant has been unable to transfer the subdivided plots. Hence the present application for review of the confirmed Grant.
12. The Respondent reiterates that she opposes the application for review of the Grant in order to protect the interests of the other beneficiaries to the estate.

### **Analysis And Determination**

13. I have carefully considered this application the reply filed thereto as well as the written submissions on record.
14. The Applicant has filed an application seeking 'review' of the Confirmed Grant issued on 19<sup>th</sup> October 2007.



15. Rectification of grants is provided in Section 74 of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rule 43(1) of the Probate and Administration Rules. Section 74 provides as follows:

“74. Errors may be rectified by court:  
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 the confirmation, may be altered and amended accordingly.”
16. Rule 43(1) provides as follows:

“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 or descriptions of any person or thing or as to the time or place of 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 made.
17. From the language of Section 74 of the *Law of Succession Act* and Rule 43(1) of the Probate and Administration Rules, the scope of rectification of grants of representation is limited to “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.” I may add that such other minor errors in that genre could also be rectified.”
18. In Re estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR where the court stated:

“The law on rectification or alteration of grants in Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules..... what these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of the deceased’s death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general...”
19. I have considered the amendments which the Applicant is seeking to have made to the Certificate of Confirmed Grant. In no way can her proposals be considered to amount to amendment of minor errors or misdescriptions.
20. Whereas the confirmed Grant provided that the Applicant was to hold Plot 1081 ‘in trust’ for her children, by this application the Applicant is seeking to have the property allocated to herself absolutely to enable her sell part of it. Therefore the Applicant is seeking to overhaul the entire mode of distribution as set out in the Confirmed Grant by seeking to substantially alter the mode of distribution of the estate.
21. The amendments proposed by the Applicant cannot be granted under a Summons for review of Grant. The Applicant will have to apply to revoke the entire confirmed Grant and apply for re-issuance of the Grant in the terms which she proposes. Such an application must of course have the consent of all the beneficiaries.
22. The prayer to have the caution placed on Plot 1081 by the Respondent lifted cannot be considered under a Summons for review/Amendment of Grant. Finally I find no merit in this Summons for review of Grant. The same is hereby dismissed in its entirety. This being a family matter I make no orders on costs.



DATED IN NYERI THIS 28<sup>TH</sup> DAY OF MARCH 2025.

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MAUREEN A. ODERO

JUDGE

