



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Sayia Mulupi (Deceased) (Succession Cause
971 of 2011) [2024] KEHC 1778 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1778 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 971 OF 2011**

SC CHIRCHIR, J

FEBRUARY 22, 2024

**IN THE MATTER OF THE ESTATE OF SAYIA MULUPI
(DECEASED)**

RULING

1. The Objector's application dated 13th October, 2021 seeks for rectification of the certificate of confirmation of grant and an order directing Mulupi Sayid the 3rd respondent to respect the boundaries between the objector's land and his
2. It is supported by the affidavit of the applicant. The application is not opposed.

Determination

3. The record shows that on the basis of an agreement arrived through mediation, the court issued a certificate of confirmation of grant on this matter. The consent was adopted on 4th December, 2019 and grant issued on 15th July 2021.
4. It is this certificate that the Applicant seeks to rectify. Specifically, the prayers sought are as follows:
 - a. That the Honourable court be pleased to rectify the certificate of confirmation of grant in respect of the shares given to Mulupi Sayid Sayia and Daniel Koika Sayia and allocate Mulupi Sayid sayia 7 acres and Daniel Koikoi Sayia 8 acres as per the allocation done by the late Sayia
 - b. That Mulupi Sayid Sayia be ordered to respect the boundaries features between the 7 acres and Daniel Koikoi Sayia's 8 acres as fixed by the deceased until actual survey is done.
5. A perusal of the Certificate of confirmation of grant, show that the Applicant and the 3rd Respondent were to share 15 acres out of parcel No. North Kabras/Malava/345.
6. The prayers sought are premised on grounds that the deceased had allocated the applicant 8 acres and the 3rd respondent 7 acres of land, and the boundaries had already been fixed.



7. The Applicant has come back to court, seeking that the Certificate of confirmation should be “rectified” to reflect what the deceased wished for.
8. The Application is misplaced majorly on two grounds:
 - a). Although the prayers are disguised as rectification, the prayers being sought are actually for a review. Rectification is about correcting minor errors such as dates, names and other errors of that genre. (Ref: Rule 74 of the *Probate and Administration Rules*) This is not a case of correcting errors. It is an attempt to get a review through the back door. It is an attempt to circumvent the orders of confirmation of grant that have already been made. It is a mischievous move. It must not be allowed.
 - b). But even if this court was to ignore the issue of technicalities and treat the Application as one of review, the prayers must still fail. They must fail because the confirmation of grant was by way of consent of the parties. It is trite law that consent orders can only be set aside by consent of the parties or if it is reestablished that the consent was obtained through fraud, misrepresentation or ignorance of material facts.
9. As for prayer 2 of the Application, this court has no jurisdiction to deal with issues of boundary disputes.
10. I have also noted the prayer as drafted and I have reservation of how such an order will be enforced even if this court was to grant it.
11. In short, the Application is unmerited. I consider it as an abuse and misuse of the court process. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF FEBRUARY, 2024

S. CHIRCHIR

JUDGE

In the presence of;-

Court Assistant;- Godwin

