



**In re Estate of Busolo Nambili (Deceased) (Succession Cause  
198 of 2015) [2024] KEHC 10395 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10395 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 198 OF 2015  
DK KEMEL, J  
AUGUST 23, 2024  
IN THE MATTER OF THE ESTATE OF BUSOLO NAMBI-  
DECEASED**

**IN THE MATTER OF**

**MARTIN MASINDE SIKUKU ..... 1<sup>ST</sup> PETITIONER**

**JOHN WEKESA BUSOLO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**FELISTA NEKESA SIKUKU ..... INTERESTED PARTY**

**RULING**

1. Before me is a summons dated 1<sup>st</sup> November 2019 and filed on even date, expressed to be brought under Sections 47 & 74 of the *Law of Succession Act*, Rules 43 & 73 of the Probate and Administration Rules. The applicants are John Wekesa Busolo and Felista Nekesa Sikuku.
2. The application seeks rectification of the certificate of grant dated 24<sup>th</sup> July 2019, for purposes of clarity and specificity in the following manner:
  - a. Martin Sikuku Busolo instead of Martin Masinde.
  - b. John Wekesa Busolo instead of John Wekesa Masinde.
  - c. The share of Felistus Nafula Busolo to read 1.2 acres instead of 12 acres.
3. The application is supported by an affidavit sworn by John Wekesa Busolo (2<sup>nd</sup> Petitioner/Applicant). He deposed that the grant with regard to the estate of the deceased was confirmed on 24<sup>th</sup> July 2019 and that the name of the 1<sup>st</sup> Petitioner was erroneously captured as Martin Masinde instead of Martin Sikuku Busolo and that of the 2<sup>nd</sup> Petitioner as John Wekesa Masinde instead of John Wekesa Busolo.



Further, that the portion for Felistus Nafula Busolo was captured as 12 acres instead of 1.2 acres as duly noted on the Court's judgement delivered on 27<sup>th</sup> March 2018.

4. The Interested Party/2<sup>nd</sup> Applicant herein, Felistus Nekesa Simiyu vide supplementary affidavit sworn on 22<sup>nd</sup> March 2024, deposed that the application is overtaken by events as the name of one Martin Masinde which they seek to revoke is deceased and that the alleged rectification of portion 12 acres to 1.2 acres is also over taken by events as the 2<sup>nd</sup> Applicant has already sold the portion.
5. The application was canvassed by way of written submissions. The 2<sup>nd</sup> Petitioner/Applicant filed his submissions while the Interested Party relied on her sworn supplementary affidavit.
6. I have considered the rival affidavits and submissions of the parties herein. The question to be answered is whether the rectification sought could be carried through under section 74 of the [Law of Succession Act](#)?
7. Rectification of grants is provided for 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 confirmation, may be altered and amended accordingly.”

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.”

8. 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.
9. Other major or substantial issues should be addressed through application for review of judgment or appeal. See In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR where the Court stated;

“The law on rectification or alteration of grants is 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.....”

10. In this case, the Applicants seek to have the name of the 1<sup>st</sup> Petitioner that was erroneously captured as Martin Masinde instead of Martin Sikuku Busolo and that of the 2<sup>nd</sup> Petitioner as John Wekesa Masinde instead of John Wekesa Busolo rectified accordingly. Such rectification falls under errors that may be



rectified under section 74 of the *law of succession Act*. I order that the names respectively indicated as Martin Masinde and John Wekesa Masinde shall now be rectified to Martin Sikuku Busolo and John Wekesa Busolo respectively.

11. Similarly, the Applicants seek rectification of the acreage of land distributed to the Interested Party/ Application as 1.2 acres and not 12 acres as captured. The ruling for confirmation of grant delivered on 27<sup>th</sup> March 2018, indicates that the Interested Party herein was apportioned 12 acres from E. Bukusu/ S. Nalondo/1013 and not 1.2 acres as alleged in the summons for rectification. Upon perusal of the Court record, it was evident that the Interested Party/Applicant herein recorded a consent order on 4<sup>th</sup> November 2020 and that the same was filed in Court on the same date, stipulating that her acreage as was apportioned on 27<sup>th</sup> March 2018 be changed from reading 12 acres to 1.2 acres. I take cognizance that the Interested Party herein on 4<sup>th</sup> November 2020 recorded a consent order that her acreage to be rectified to read 1.2 acres instead on 12 acres. Consent orders in these circumstances are Court orders that set out what the Interested Party wants with regard her apportioned portion in the deceased's estate.
12. Fundamentally, the Interested Party/Applicant in her supplementary affidavit sworn 23<sup>rd</sup> March 2024 did not dispute that her acreage is 1.2 acres but simply termed the prayer as overtaken by events as the 2<sup>nd</sup> Petitioner already sold the portion. In the case of *Frank Phipps & Pearl Phipps v Harold Morrison* SCCA 86 of 2008 Harris JA stated:

“As a general rule, an order obtained by the consent of the parties is binding. It remains valid and subsisting until set aside by fresh proceedings brought for that purpose. *Kinch v Walcott and Others* {1929} A.C. 482 “The bringing of fresh proceedings would normally be guided on the obtaining of the consent order by fraud, mistake or misrepresentation.”
13. *Wildung v Sanderson* {1897} 2 CL 534:

“A consent Judgment or order is meant to be the formal result and expression of an agreement already arrived at by the parties to the proceedings embodied in an order of the Court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is of course, enforceable while it stands, and a party affected by it cannot if he concludes, he is entitled to relief, simply wait until it is sought to be enforced against him, and then raised by way of defence. The matters in respect of which he desires to be relieved. He must, when he has completed obey it, unless and until he can get it set aside in proceedings duly constituted for this purpose.”
14. From the foregoing, this does not alter the core of the judgment but simply gives a proper acreage entitled to the Interested Party/Applicant herein. For that reason, i grant only two rectifications: the names of Martin Masinde and John Wekesa Masinde respectively and that Felista Nekesa Sikuku to be apportioned 1.2 acres.
15. I am aware that the 2<sup>nd</sup> Petitioner/Applicant wants security to be granted for purposes of conducting survey and subdivision of the land. The interested Party in her sworn supplementary affidavit averred that the prayer is overtaken by events as the deceased person's only asset, Land Parcel No. E. Bukusu/ S. Nalondo/1013 had already been distributed by the deceased and suggested that this Court refers this matter to mediation as was recommended by the National Chair of the Clan. I find this prayer to be merely facilitative towards closure of this otherwise long-drawn matter. A critical analysis of this Court record reveals the lack of cooperation within the family of the decased and hence the need for police presence during the exercise of survey. An order is issued that the OCS, Nalondo Police Station,



be present, upon sufficient notice, to provide security and ensure public order is not disturbed when the surveyor visits the land for purpose of survey with a view to sub-divide land parcel No. E. Bukusu/ S. Nalondo/1013 in furtherance of the orders on distribution of the estate.

16. In the result, it is my finding that the Applicants' application dated 1.11.2019 is merited and is allowed in terms of prayers 2 and 3 thereof. There will be no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT BUNGOMA THIS 23<sup>RD</sup> DAY OF AUGUST 2024.**

**D. KEMEI**

**JUDGE**

In the presence of:

Sabwami & Wamalwa Simiyu for 1<sup>st</sup> Petitioner

Sabwami & Wamalwa Simiyu for 2<sup>nd</sup> Petitioner/ Applicant

Alori for Interested Party/Applicant

Kizito Court Assistant

