



**In re Estate of Wilson Wachenda Mason alias Wachenda Mason (Deceased)
(Succession Cause 59 of 2011) [2024] KEHC 10382 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10382 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 59 OF 2011
RN NYAKUNDI, J
AUGUST 23, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE WILSON
WACHENDA MASON ALIAS WACHENDA MASON (DECEASED)
SUMMONS FOR RECTIFICATION OF GRANT UNDER SECTION 74 OF THE LAW OF
SUCCESSION ACT UNDER RULE 43(1) PROBATE AND ADMINISTRATION RULES**

**IN THE MATTER OF
SHIKUKU MASON SITERA PETITIONER**

RULING

1. What is pending before me for determination is summons for rectification of grant dated 4th December 2023, seeking orders as follows:
 - a. Spent
 - b. That the Grant of representation issued to the Applicants/Petitioners in this matter and confirmed on 9th February 2012 be rectified in the following respects as provided by Rule 43(1) of *Probate and Administration rules*.
 - c. That this Honourable Court be pleased to order amendment and rectification and/or rectification and/or amendment of the Certificate of Confirmation to include the parcel known as KAKAMEGA/CHEKALINI/238 to the list of beneficiaries and substitute with parcel known as KAKAMEGA/SURUNGA/25 which shall be given to the administrator.
2. The Application is based upon the grounds among others: that the acreages captured in the Certificate of confirmation of grant on the parcel known as KAKAMEGA/CHEKALINI/238 is less than the actual acreages on the ground; that there is need to substitute parcel known as KAKAMEGA/CHEKALINI/238 to be shared by beneficiaries and the land parcel KAKAMEGA/SURUNGA/25 be given to the administrator herein and the costs of this Application to be provided for.



3. The summons is supported by an affidavit sworn by Shikuku Mason Sitera, which attempts to put the cause into context and for that reason I shall have it reproduced. The Applicant deposed as hereunder;
 - a. That I am an administrator of the above mentioned estate hence competent to swear this affidavit.
 - b. That Certificate of Confirmation of Grant issued on 9th February 2023 was made to me.
 - c. That the Certificate of Confirmation of Grant issued capture the parcel known as KAKAMEGA/CHEKALINI/238 and the list of beneficiaries to share the said land as 0.4 acres.
 - d. That the actual acreages on the ground less and there is need to substitute with parcel known as KAKAMEGA/CHEKALINI/238 so that all beneficiaries get their share
 - e. That the parcel known as KAKAMEGA/SURUNGA/25 be given to me.
 - f. That this Honourable Court be pleased to order amendment and rectification and/or alteration and/or amendment of the Certificate of Confirmation to include the parcel known as KAKAMEGA/SURUNGA/25 to the list of beneficiaries and substitute with parcel known as KAKAMEGA/CHEKALINI/238 for purpose of distribution.
4. The Application is unopposed.

Analysis and Determination

I have considered the Application, the Supporting Affidavit and the Annexures therein.

5. This court is alive to the fact that rectification of a grant under Section 74 of the *Law of Succession Act* is in respect of errors and mis-descriptions only. That Section provides as follows:

'74. Errors in names and descriptions or in setting out 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.'
6. Rule 43 (1) of the *Probate and Administration Rules*, by which the substantive provision of Section 74 of the *Law of Succession Act* is enforced, instructively provides:

'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 time or place of the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made.'
7. It is clearly a procedure for correction of minor errors in the in the grant, and I must respectfully agree with the position observed in *Re Estate of Njagi Rurima (Deceased)* [2020] eKLR, where the court (F Muchemi J) said: 'There is no provision in the Act that permits rectification or amendment by adding a new beneficiary in the grant or to redistribute the estate.'
8. Similarly, with the Court in re estate of *Charles Kibe Karanja (Deceased)* [2015] eKLR (W Musyoka J) interpreting section 74 of the *Act* elaborated as follows:

'From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not



approach the court through Section 74 of the Law of Succession Act, for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.'

9. I am strongly persuaded with the finding in *Estate of Hasalon Mwangi Kabero* [2013] eKLR where the Court held that the provisions of the *Civil Procedure Rules* are not analogous to the provisions of Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules. The Law of Succession Act only permits rectification of grants in 3 delineated areas:
 - a. Errors in names and descriptions of persons or things;
 - b. Errors as to time or place of death of the deceased; and
 - c. In cases of a limited grant, the purpose for which such limited grant is made.
10. The Applicant herein seeks an order from this Honourable Court of amendment and rectification and/or rectification and/or amendment of the Certificate of Confirmation to include the parcel known as KAKAMEGA/CHEKALINI/238 to the list of beneficiaries and substitute with parcel known as KAKAMEGA/SURUNGA/25 which shall be given to the administrator. He has advanced this by stating that the acreages captured in the Certificate of confirmation of grant on the parcel known as KAKAMEGA/CHEKALINI/238 is less than the actual acreages on the ground; that there is need to substitute parcel known as KAKAMEGA/CHEKALINI/238 to be shared by beneficiaries and the land parcel KAKAMEGA/SURUNGA/25 be given to the administrator herein
11. The court finds that by allowing the sought substitution of the 2 parcels of land in a totally distinct manner, the distribution of the estate of the deceased as ordered by the court will be effectively distorted and altered.
12. This court, therefore, takes the view in agreement with the courts in Re Estate of Njagi Rurima (Deceased) [2020] eKLR and re estate of Charles Kibe Karanja (Deceased), *supra*, that the sought substitution of the 2 properties cannot be effected through rectification of the grant as sought by the Petitioner in the Summons for Rectification of Grant dated dated 4th December 2023. It must be a substantive application that permits the review or reconsideration by the court of the orders of distribution made in the confirmation of the grant.

Accordingly, for the reasons set out above, the court makes the following orders: The Confirmed Grant dated 9th February 2012 is rectified to capture the parcel known as KAKAMEGA/CHEKALINI/238 and the list of beneficiaries to share the said land as 0.4 acres. There shall be no order as to costs.

DATED SIGNED AND DELIVERED VIA EMAIL AT ELDORET, THIS 23RD DAY OF AUGUST 2024



R. NYAKUNDI
JUDGE

