



**In re Estate of M’rimunya M’njau (Deceased) (Succession Cause
368 of 2015) [2023] KEHC 736 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 368 OF 2015
LW GITARI, J
JANUARY 26, 2023
(FORMERLY CHUKA SPM’S SUCC. CAUSE NO. 368 OF 2013)
IN THE MATTER OF THE ESTATE OF M’RIMUNYA M’NJAU (DECEASED)**

BETWEEN

MERCY IGOJI MAINGI PETITIONER

AND

LUCY KAREGI KINYUA APPLICANT

RULING

1. Before this court is the applicant’s summons application for substitution and rectification of grant. It seeks for the following orders:
 - a. Spent.
 - b. That the hon court be pleased to appoint Lucy Karegi Kinyua as the administrator in place of Mercy Igoji Maingi.
 - c. That the hon court be pleased to revoke and amend the grants of letters of administration and confirmed grant issued to the petitioner to read with the names of Lucy Karegi Kinyua.
 - d. That the hon court be pleased to amend the confirmed grant issued on February 4, 2016 to read as per paragraph ten (10) of the supporting affidavit.
 - e. That the cost of the application shall be in cause.
2. The application is based on the grounds on the face of it and is supported by the affidavit of Lucy Karegi Kinyua sworn on July 9, 2021.



3. The applicant depones that she is the grand child of the deceased by virtue of being married to the deceased's grandson, one of the beneficiaries of his estate. That the petitioner/respondent is the applicant's mother-in-law as the applicant is married to the respondent's son (Kinyua) who apparently disappeared from the vicinity a long time ago and nobody knows his whereabouts. The applicant alleges that the petitioner lied to the court that the said Kinyua lives in Nanyuki. That the petitioner is elderly and has been so adamant and has refused to sit down with the applicant and the other two (2) surviving beneficiaries so as to distribute the estate of the deceased as ordered by this court. The applicant alleges that the respondent wants to disinherit the applicant and the applicant's six (6) grandchildren who live in the land. the applicant further alleges that the respondent has started selling the land to punish her and her children.
4. At paragraph 10 of the applicant's affidavit, the applicant urges this court to order that she be included as a beneficiary and that the two (2) surviving beneficiaries have agreed that the applicant be given LR No Mwimbi/Murugi/1331 because the applicant and her children supposedly live and depend on the land. She thus urges the court to amend the confirmed grant to read as follows:

A LR Mwimbi Murugi/1331

Lucy Karegi Kinyua - Whole

5. The applicant further depones that this succession cause is at a standstill because the administrator is uncooperative and adamant and has threatened to sell the land. It is thus her case that it is fair and equitable that her prayers in the present application be granted.
6. The respondent did not file any response to the application and the court noted that there is an affidavit of serve on record showing that the respondent was duly served.
7. The application is expressed to have been brought under the provisions of section 74 of the [Law of Succession Act](#), cap 160 of the Laws of Kenya, (the "act") and rule 43 of the [Probate and Administration Rules](#) (the "rules").
8. Section 74 of the [act](#) provides that:

"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."
9. Rule 43 of the [rules](#) on the other hand provides that:

“(1) 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 the 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 issued.

(2) Unless at the time of issue of the summons the registrar otherwise directs there shall be filed with the summons an affidavit in form 13 by the applicant containing such information as is necessary to enable the court to deal with the matter.



- (3) The summons, together with the affidavit (if any), shall without delay be laid by the registrar before the court which may either grant the application without the attendance of any person or direct that it be set down for hearing on notice to the applicant and to such other persons (if any) as the court shall think fit.”
10. From the language of section 74 of the act and rule 43(1) of the 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.
11. *In the matter of the estate of Geoffrey Kinuthia Nyamwinda (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.....
12. The upshot of the foregoing provision and authority is that other major or substantial issues should be addressed through application for review of judgment or appeal. In this case, the applicant is seeking the name of the petitioner/respondent in the confirmed grant to be substituted with the applicant’s name on the grant that the respondent has apparently been adamant to distribute the estate. Such a substitution, in my view, does not fall under errors that may be rectified under section 74 of the act. Such an amendment is so substantial and the applicant has not even provided proof of her claim that the other beneficiaries have consented to the requested substitution.
13. In the circumstances, I find that the application lacks merit. I order that the application be dismissed.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 26TH DAY OF JANUARY 2023.

LW GITARI

JUDGE

