



In re Estate of Stephen Manyara Magiri (Deceased) (Succession Cause 158 of 1995) [2023] KEHC 20937 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 158 OF 1995**

LW GITARI, J

JULY 27, 2023

**IN THE MATTER OF THE ESTATE OF STEPHEN MANYARA MAGIRI –
DECEASED**

**IN THE MATTER OF
JUANINA MUNYANGE MANYARA PETITIONER**

RULING

1. The applicant Angelo Kirimi M’Manyara seeks an order that he be substituted herein in place of the petitioner Juanina Munyange M’Manyara who is now deceased. The applicant avers that the grant of letters of administration was confirmed on June 13, 1996 and should therefore be rectified to reflect the change.
2. I have considered the application. The applicant has brought this application under Section 74 of the Law of Succession Act (Cap 160 Laws of Kenya) to be referred to as the Act and Rule 43 of the Probate and Administration Rules. Section 74 Law of Succession Act and Rule 43 of the Probate and Administration Rules Provides as follows-;

Rule 43



43.	Rectification of grant	
(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	



	<p>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.</p>
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(2)	<p>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.</p>
(3)	<p>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.</p>

3. It is clear from the above provisions that rectification of grant applies to correct errors which can be done without affecting the substance of the grant. The matter which fall within the scope of rectification of grant are errors in names and description or in setting forth the time and place of the deceased's death, or the purpose in a limited grant. These can be corrected and the grant be rectified



accordingly. The courts have dealt with the issue of rectification of grant *in the matter of the Estate of Geoffrey Kinuthia Nyamunga (deceased)* 2013 Eklr the court stated-;

“The law on rectification 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 and descriptions or the setting out of 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 court by these provisions is not general.”

4. The errors which are referred are minor mistakes which when amended will leave the grant intact as ordered by the court when confirming it. The applicant avers that the petitioner has since passed on. The death certificate attached herein shows that she died on 18th September, 2005. She has never been substituted. The grant was confirmed on June 12, 1996 which I note was after the death of the petitioner. There is no explanation as to why the grant has not been executed when it was confirmed long time. On the other hand the grant may have become inoperative as provided under Section 76(e) of the *Act* which states a grant may be revoked by a court where “the grant has become useless and in operative through subsequent circumstances”

5. The applicant wishes to be substituted as a petitioner in this matter. Section 45(1) of the *law of succession Act* provides that-;

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person”

What this means is that no person can deal with the estate of a deceased unless it is a person who has been authorized by the Act or by a grant or representation. The applicant seeks to substitute the petitioner who died many years back. The applicant has not obtained a grant of representation in the estate of the deceased or even a limited grant as provided under Section 53 and 54 of the Act. It is my view that the applicant lacks locus standi to bring this application. Locus standi is what gives the party the right to be heard. He is not the administrator of the estate of the deceased.

6. The applicant also seeks an order that land Parcel No Meru Central Ruiru/Rwarera/113 be included in the grant. The certificate of official search shows that the land parcel is in the name of Imanyara Magiri who is the deceased herein. I also note that the title deed was issued in 2017 and the deceased had already passed away. The name on the search certificate and on the death certificate which are clearly different needs to be ascertained.

In Conclusion

7. For the reasons stated above, I find that the application is not properly before this court as the orders sought cannot be granted by way of rectification of grant. The applicant lacks *locus standi* as he has not been appointed as the administrator of the estate of the deceased. There is also a possibility that the grant has become inoperative due to the death of the petitioner. For these reasons I find that the application lacks merits and is dismissed.

DATED SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF JULY 2023

L. GITARI

JUDGE

