



REPUBLIC OF KENYA



**In re Estate of Philip Mussau Mulei (Deceased) (Succession Cause 2378 of 2001)  
[2023] KEHC 24437 (KLR) (Family) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24437 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2378 OF 2001  
EKO OGOLA, J  
SEPTEMBER 28, 2023  
IN THE MATTER OF  
PHILOMENA NDUKU MULLEI ..... APPLICANT**

**RULING**

1. The summons before this court is dated August 4, 2022. The applicant prays for the following orders:-
  - a. That the Grant of Letters of Administration issued to the said Philomena Nduku Mulei and Iva Mussau Mulei on the March 12, 2002 and Certificate of Confirmation of grant issued on 24<sup>th</sup> July 2006 to the said Administrators to be rectified in the following respects as provided for:-
    - i. That the Land Reference No. 209/10905 which was erroneously omitted in the list of properties listed in the Confirmation of Grant issued to Philomena Nduku Mulei and Iva Mussau Mulei to be part of the List of properties of the deceased.
    - ii. That the schedule of the properties forming the estate of the deceased be rectified accordingly as to include Land Reference: 209/10905
  - b. That the costs of this application be costs in the cause.
2. Phillip Mussau Mulei (deceased) died intestate on 9<sup>th</sup> June 2001. Grant of Letters of Administration was issued on 12<sup>th</sup> March 2002 to his surviving widow and son, Philomena Nduku Mulei and Iva Mussau Mulei. The grant was later confirmed on 24<sup>th</sup> July 2006. The Applicant is now praying for the grant to be rectified to include a property that was not in the initial schedule of assets of the estate.



## Determination

3. I have considered this summons for rectification of grant and the Affidavit in support thereto. Rectification of Grants is provided for by section 74 of the [Law of Succession Act](#), cap 160, Laws of Kenya which provides as follows:-

“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.”

4. Rule 43(1) of the [Probate and Administration Rules](#) further stipulates that:-

“43(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.”

5. From the aforementioned provisions, rectification is allowed in order to correct a misdescription of a property or to correct a name which has not been fully or properly described in the Grant.

6. So, does discovery of new assets fit in the conditions stipulated in the aforementioned provisions? [In Re Estate Of Charles Kibe Karanja \(Deceased\)](#) 2015 eKLR the Court held as follows:-

“If 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 affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”

7. From the foregoing I find that the sweeping changes of adding new assets to the already confirmed grant does not fall under the scope of rectification under section 74. Applicants should have applied for a review of the confirmed grant on the grounds of discovery of new assets that were not known to them at the time of applying for confirmation of grant. However, this Court is still clothed with jurisdiction to issue orders that will meet the end of justice. Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

8. The upshot is that I allow the summons dated August 4, 2022 as prayed. Cost of the application be in the cause.

It is so ordered.



**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023.**

.....

**E.K. OGOLA**

**JUDGE**

In the presence of:

N/A for the Applicant

Gisiele Muthoni Court Assistant

