



**In re Estate of Kamenju Kinyanjui (Deceased) (Succession Cause 2655 of 2006)
[2023] KEHC 24438 (KLR) (Family) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24438 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2655 OF 2006
EKO OGOLA, J
SEPTEMBER 25, 2023
IN THE MATTER OF THE ESTATE OF KAMENJU KINYANJUI (DECEASED)**

RULING

1. Before the court is a Summons Application dated 20th December, 2022 where the Applicant prays for the following orders:
 1. That the Certificate of Confirmation dated 21st May, 2008 which was issued to Mwaura Shadrack and Elizabeth Wanjiru Kamenju (Elizabeth Wanjiru Kamenjunow deceased) as well as the grant of letters of administration dated 29th January, 2007 be rectified as per the supporting Affidavit
 2. That the costs be in the cause
2. The application is supported by the Affidavit of Mwaura Shadrack Kimenju sworn on 20th December, 2022.
3. The applicant's case is that when the deceased Kamenju Kinyanju died, Grant of letter of Administration was issued to Elizabeth Wanjiru Kamenju and Mwaura Shadrack Kimenju the Applicant on 29th January 2007 and confirmed on 21st May, 2008. According to the applicant, the co-administrator Elizabeth Wanjiru Kamenju is now deceased.
4. The applicant also states that one of the beneficiaries of the estate Zacharia Kinyanjui Kamenju is deceased and the applicant seeks that he is replaced with his widow Hellen Njeri Kinyanjui as the heir of her deceased husband share in the estate
5. The Applicant further states that Justus Githinji Kamenju also a beneficiary is deceased and the applicant seeks that he is replaced with his widow Emily Wambui Githinii as the heir of her deceased husband share in the estate.



6. The applicant avers that the deceased co-administrator's share shall be shared amongst the beneficiaries as agreed by all the beneficiaries. The Applicant has made a new mode of distribution in line with the prayer for rectification.

7. The application is unopposed.

8. Section 74 of the [Law of Succession 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.

Rule 43(1) of the [Probate and Administration Rules](#) provides that: - 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.”

9. Rectification of a grant of Letters of Administration is therefore limited to matters set out under Section 74 of the [Law of Succession Act](#). As per this provision rectification of grant deals specifically with correction of error which the court may order without changing the substance of the grant. This includes errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is visualized under the Section is a mistake which may occur on the face of the grant like typing errors in names of persons or the things. A rectification seeking to include properties which were not in the schedule of the assets when filing the cause and not included in the grant may not fit in the matters provided under Section 74 of the [Act](#). 10. Replacing beneficiaries with another beneficiary seems not to fall under rectification described under Section 74.

10. However, this court has discretion under Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and [Administration Rules](#) which provide: -

“Section 47 of the [Law of Succession Act](#), stipulates that: "The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...”

“Rule 73 of the [Probate and Administration Rules](#) stipulates 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.”

11. The applicant has provided proof that the said beneficiaries are dead and has also provided proof that the beneficiaries agree to the estate being distributed as per the schedule in the supporting Affidavit. The beneficiaries have all consented to the new mode of distribution. The duty of this court is to see to it that litigation comes to an end. This unopposed application means that anyone who could raise an objection to this succession in the capacity of a beneficiary is agreeable to the new distribution schedule.

12. In the circumstances, I order that the Confirmation of Grant dated 21st May,2019 be rectified to accommodate the new mode of distribution. The Summons Application dated 20th December, 2022 is therefore allowed.

It is so ordered.



DATED SIGNED AND DELIVERED AT NAIROBI ON THE 25TH DAY OF SEPTEMBER 2023.

E.K. OGOLA

JUDGE

Ruling read and delivered in chamber online in the presence of:

Mr. Shadrack for the Applicant

Ms. Gisiele M Court Assistant

