



REPUBLIC OF KENYA



**In re Estate of Joseph Tietie (Deceased) (Succession Cause
496 of 2008) [2023] KEHC 24724 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 496 OF 2008
SC CHIRCHIR, J
OCTOBER 26, 2023
IN THE MATTER OF THE ESTATE OF JOSEPH TIETIE (DECEASED)**

IN THE MATTER OF

**MARCELINA KHASOA TIETIE 1ST APPLICANT
BENARD TIETIE ACHEBI 2ND APPLICANT**

RULING

1. The Application dated 9th February 2023 seeks for the rectification of the certificate of confirmation of grant issued on 28th October 2010. The rectification sought is to correct the number of shares that were issued to the beneficiaries. It is stated that the rectification will provide clarity and specificity. The orders sought are:
 - a. That the certificate of confirmation of grant issued to Marcelina Khasoa Tietie & Benard Achebi Tietie be amended in terms of the shares given to the beneficiaries Patrick Ashitiba Tietie, Bernard Achebi Tietie, Alex Akala Tietie, Vincent Lusimba Tietie, Wycliffe Indeche Tietie, Bonface Khasiane Tietie, Silas Musoka Tietie and Aggrey Murunga to read 0.09 HA instead of 0.9 HA respectively.
 - b. That cost be in the cause.
2. The Application is supported by an affidavit sworn jointly by Marcelina Khasoa Tietie and Bernard Achebi Tietie. They have informed the court that while applying for confirmation of the grant, the measurements of some of the portions were erroneously indicated as 0.9 HA instead of 0.09 ha.
3. Further they averred it is fair that the certificate of confirmation issued be rectified to capture the correct shares.
4. The said application was not opposed by any of the beneficiaries.



Determination

5. Rectification of grants is provided for under section 74 of the [Law of Succession Act](#), Cap 160, Laws of Kenya and Rule 43(1) of the [Probate and Administration Rules](#).
6. Section 74 of the [Law of Succession Act](#) provides as follows;

Errors may be rectified by court: 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.”
7. Rule 43(1) provides as follows: “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 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 made.”
8. From the language of section 74 of the [Law of Succession Act](#) and Rule 43(1) of the [Probate and Administration 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. Minor errors in that genre can also be rectified.
9. The effect of the above provisions was expounded in the case of [Geoffrey Kinuthia Nyamwinga \(deceased\)](#) [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.....”
10. The record shows that during the Application for confirmation of the Grant, the petitioner proposed an apportionment of Title No. Isukha/ Mukhonje /980 into several portions of 0.9 ha, one portion of .0.06 ha and another of 0.11ha
11. In this case the applicants seeks to have the shares allocated to the beneficiaries be rectified to read 0.09 Ha instead on 0.9 Ha and that the error to be rectified accordingly. It is stated that the allocation of 0.9 ha was erroneous and that it ought to have been 0.09 hac
12. The Application is accompanied by a consent showing that the beneficiaries have consented to the rectification
13. Such rectification falls under errors that may be rectified under section 74 of the [law of succession Act](#).
14. The Application is merited and the same is hereby allowed. A rectified certificate of confirmation of grant to issue and the mode of distribution shall be as per paragraph 4 of the Affidavit in support sworn on 9th February 2023.

DATED , SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 26TH DAY OF OCTOBER 2023.



S. CHIRCHIR
JUDGE.

