



REPUBLIC OF KENYA



**In re Estate of Nyameri Onchoke (Deceased) (Succession Cause
25 of 1997) [2023] KEHC 27260 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27260 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 25 OF 1997
JM CHIGITI, J
DECEMBER 20, 2023
IN THE MATTER OF THE ESTATE OF NYAMERI ONCHOKE (DECEASED)
IN THE MATTER OF
JAMES ONDIEKI NYAMERI PETITIONER**

RULING

Background

1. The Applicant before this court is dated June 19, 2023. The Applicant seeks the following Orders: -
 1. Spent
 2. That this Honourable Court be pleased to amend and/or rectified the Grant of Letters of Administration (P&A41) issued to and/or in the names of Maria Nyamboba Nyameri (now deceased petitioner) and have the same in the names James Ondieki Nyameri (now the administrator).
 3. That costs of this application in the cause.
2. The Application is predicated on the Supporting Affidavit of James Ondieki
3. The Application is not opposed.
4. According to James Ondieki Nyameri, grant of Letters of Administration was issued to Maria Nyamboba Nyameri on the 12th day of March, 1997.
5. This Honourable Court issued the Petitioner, now deceased, with grant of letters of administration on the 12th day of March, 1997 unfortunately the Petitioner died on 14th day of December, 2004 before applying for confirmation of the said grant.
6. He applied to be substituted in place of the deceased Petitioner Maria Nyamboba Nyameri which application was allowed by the Honourable Court on the 18th day of April, 2023.



7. He thereafter erroneously applied for confirmation of the said grant before having the same amended and/or re-issued in his names, and he cannot execute the said Grant unless it is amended and/or reissued in his names.
8. The Applicant diligently filed submissions as directed by the court.

Analysis and Determination

9. I have considered this summons for rectification of Grant, the supporting as well as the written submissions filed by Applicant. Although the Application was consented to by all the beneficiaries who attended court on December 6, 2023 this court is under a duty to uphold the provisions of The Law of Succession.
10. 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.”

11. Rule 43(1) of the *Probate and Administration Rules* states as follows:

“ 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.”

12. Rectification is allowed in order to correct a mis-description of a property or to correct a name which has not been fully or properly described in the Grant.
13. The amendments sought to be made are central and far reaching.
14. There is intention to alter. This is not what was envisaged by section 74. Rectification of a Grant is only permissible to cure minor errors, mistakes and irregularities in the Grant. Rectification cannot be used to fundamentally alter the character of the Grant.
15. 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.” (own emphasis).



16. The proposed change through the summons do not fall under the scope of rectification under section 74. By this summons the Administrator is proposing to make fundamental and far reaching changes to the Grant under the guise of rectification.
17. The Administrator is directed to apply to revoke the original Grant and apply that the same be re-issued with the proposed changes within seven days of that day's date.
18. The consent of all the beneficiaries must be obtained once again. The Beneficiaries appeared before this court on 6.12.23 when they indicated that they did not object to the rectification and that they consented to the mode of distribution.

Order:

19. I find no merit in this application. The summons for rectification of Grant dated is dismissed in its entirety.
20. This being a family matter there shall be no orders as to costs.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2023

J. CHIGITI (SC)

JUDGE

