



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERUGOYA**  
**SUCCESSION CAUSE NO. 437 OF 2014**  
**IN THE MATTER OF THE ESTATE OF KIRIRO GATIMU (DECEASED)**

**AND**

**EDDAH NYAKIO KATHUNI.....APPLICANT**

**VERSUS**

**CECILY WAMBUI GATIMU.....PETITIONER/RESPONDENT**

**RULING**

1. This matter relates to the estate of **Kariro Gatimu**, deceased, who died on 5<sup>th</sup> August, 2011. Letters of Administration were issued to **Cecily Wambui Gatimu** and confirmed on 15<sup>th</sup> December, 2016. The estate of the deceased which was comprised in Land Parcel No. **Inoi/Kimandi/1114** was ordered to be distributed to the beneficiaries as follows:

Jane Wanjiru Kiriro - 0.126 HA

Mathew Wachira Gatimu - 0.126 HA

Mubibu Gatimu - 0.126 HA

Cecily Wambui Gatimu - 0.126 HA

Nancy Muringo Gatimu - 0.126 HA

Eddah Nyakio Kathuni and Cecily Wambui Gatimu - 0.126 jointly

2. The applicant Edah Nyakio filed an application for Summons for rectification of grant. Her claim is that after issuance of the certificate of confirmation of grant, she discovered that her portion is to be registered jointly with the petitioner which was wrong as she was supposed to own her own portion alone. She prays that the grant be rectified to reflect that she gets 0.126 hectares.

3. The Petitioner opposed the application and filed replying affidavit sworn on unknown date as it is not dated. Her case is that the applicant is a daughter of the deceased's sister and is a young mother. She decided that her portion be registered jointly in her names since she thought she could be easily cheated to sell the said plot. However, during the hearing she stated that she is not opposed to the rectification of the

grant on condition that the applicant's portion be registered in her name and that of her child.

4. I have considered the application. The issue which arises is the rectification of grant. This is provided under Section 74 and rule 43 (1) Probate and Administration Rules of the Law of Succession Act. **Section 74** of the **Law of Succession Act** provides:

*“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:

*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.”*

Rectification is done to rectify or to correct errors in names or description of any person or thing or as to the time or place of death. In this case the applicant is not stating that there was an error in her name or in any description. What she is stating is that it was wrong for the share to be registered jointly with that of the petitioner. In the matter of the estate of **Hasalon Mwangi Kahero [2013] eKLR** the Court stated:

*“An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased’s death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error? It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.”*

In the matter of the estate of **Geoffrey Kinuthia Nyamwinga(deceased) [2013] eKLR** 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.....*

*Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the Law of Succession Act, the applicant ought to approach the Court under Order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the Court under this provision – Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”*

5. I am in agreement with the holding in the above authorities. Though the applicant is seeking a rectification of the grant, the averments do not support an application for rectification of grant. Though the application is not opposed, it would be setting a bad precedent by allowing the rectification of grant for reasons not provided for under the Act. The applicant was present in Court when the grant was confirmed and she consented. If any matter has arisen which makes her want to be registered in her own name, she ought to have filed an application for review under **Order 45 Civil Procedure Rules**. She is an adult who can be registered on her own. The present application does not meet the threshold for rectification of grant. I dismiss the application.

*Dated and delivered at Kerugoya this 21<sup>st</sup> day of February, 2018.*

**L. W. GITARI**

**JUDGE**

Ruling read out in open Court, applicant present, Respondent absent, court assistant Naomi Murage this 21<sup>st</sup> day of February 2018.

L. W. GITARI

**JUDGE**

21.02.2018