



REPUBLIC OF KENYA



**In re Estate of Asentus Akuku Ogwela alias Ansentus Akuku Ogwela (Deceased)
(Succession Cause E002 of 2022) [2025] KEHC 1717 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE E002 OF 2022**

OA SEWE, J

FEBRUARY 20, 2025

**IN THE MATTER OF THE ESTATE OF ASENTUS AKUKU
OGWELA ALIAS ANSENTUS AKUKU OGWELA (DECEASED)**

AND

**IN THE MATTER OF SUMMONS FOR RECTIFICATION OF GRANT PURSUANT
TO SECTION 74 OF THE LAW OF SUCCESSION ACT, CHAPTER 160, LAWS OF
KENYA AND RULE 43(1) OF THE PROBATE AND ADMINISTRATION RULES**

RULING

1. Before the Court for determination are two applications for Rectification of Grant filed pursuant to the provisions of Section 74 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and Rule 43(1) of the Probate and Administration Rules. The first application is dated 20th September 2024, brought by the petitioner, Peterson Clement Akuku. It seeks orders that:
 - (a) The Grant of Letters of Administration Intestate issued to Peterson Clement Akuku in this matter on the 30th November 2022 be rectified to indicate the deceased's name, which appears on the Register of Land Parcels Numbers Kanyamwa/Kabonyo/Kwandiku/701, 2700, 2699 and Homa Bay/Kasrime/2944, 1299, 2943, 1874 and 1859 as Ansentus Akuku Ogwela to read Asentus Akuku Ogwela alias Ansentus Akuku Ogwela.
 - (b) That the costs of the application be in the cause.
2. The application is supported by the affidavit of the petitioner, sworn on September 20, 2024. The petitioner explained that he petitioned the Court for Grant of Letters of Administration Intestate in respect of the estate of the deceased and was issued with the Grant on 30th November 2022. Thereafter, it came to his attention that the baptismal name of the deceased was erroneously indicated in the Land Register as "Ansentus" as opposed to "Asentus" in respect of Land Parcels Karungu/Kanyasa/2944, 1299, 2943, 1874 and 1859.
3. The petitioner further averred that, other parcels of land are as per the deceased's name as shown in the Certificate of Death, which is at variance with the name as reflected in the Land Register. He singled



- out Land Parcels No. Kanyamwa/Kabonyo/Kwandiku/701, 2700, 2698; Homa Bay/Kasrime/1009 and Karungu/Kanyasa/1305 as the pieces of land affected by this discrepancy. He explained that it would be prudent to rectify the anomalies so as to avoid complications at the Land Registry at the transmission stage.
4. In support of his averments, the petitioner annexed copies of the Certificates of Official Search for the aforementioned parcels to his Supporting Affidavit. They were marked Annexure PCA-2 and they confirm that indeed, in some instances, the deceased's name was indicated as "Asentus" while in others as "Ansensus".
 5. Section 74 of the *Law of Succession Act*, recognizes that:

"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."
 6. In the premises, having given due consideration to the application dated 20th September 2024, I am satisfied that it is meritorious. The same is hereby allowed and orders granted as follows:
 - (a) The Grant of Letters of Administration Intestate issued to Peterson Clement Akuku in this matter on the 30th November 2022 be rectified to indicate the deceased's name, which appears on the Register of Land Parcels Numbers Kanyamwa/Kabonyo/Kwandiku/701, 2700, 2699 and Homa Bay/Kasrime/2944, 1299, 2943, 1874 and 1859 as Ansensus Akuku Ogwela to read Asentus Akuku Ogwela alias Ansensus Akuku Ogwela.
 - (b) That the costs of the application be in the cause.
 7. The second application for rectification is dated 20th January 2025. It was filed by Erick Okomo Akuku and Gilbert Otieno Akuku for orders that:
 - (a) The Grant of Letters of Administration Intestate issued to Peterson Clement Akuku in this matter on 30th November 2022 be rectified to include the names of the applicants as co-administrators.
 - (b) The costs of the application be in the cause.
 8. The application is premised on the grounds that the estate is vast and that the inclusion of the two applicants would assist the current administrator, Peterson Clement Akuku to cater for the interests of the deceased's beneficiaries who are resident in Kasrime in Kwabwai, Kanyamwa in Homa Bay County and Karungu Kanyasa in Migori County.
 9. The applicants relied on the averments set out in the Supporting Affidavit sworn by the 1st applicant, Erick Okomo Akuku. They deposed that a resolution for the joinder of the applicants was made at a family meeting held on the 27th December 2024. A copy of the Minutes of the said meeting was annexed to the Supporting Affidavit and marked Annexure EOA – GOA – 1. Those Minutes confirm that indeed, a resolution was made by the family of the deceased to have the two applicants as joint administrators with Peterson Clement Akuku; and whereas a plausible justification has been given for such inclusion, that reason is not one of those contemplated under Section 74 of the *Law of Succession Act* to warrant rectification of Grant.



10. More importantly, Section 74 envisages that the application for rectification of Grant be made by the holder of the Grant, in this case, Peterson Clement Akuku. That is why Rule 43(1) of the Probate and Administration Rules stipulates 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 ... he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

11. The applicants are not holders of grant for purposes of Section 74 of the Law of Succession Act. Moreover, Grants are made in personam and are incapable of assignment to other persons, even in the event of death of the sole administrator. In the case of Florence Okutu Nandwa & Another v John Atemba Kojwa, Kisumu Civil Appeal No. 306 of 1998, the Court of Appeal made it clear that:

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the Law of Succession Act. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules)...”

12. For the foregoing reasons, it is my finding that the second application lacks merit. The same is hereby dismissed with an order that the costs thereof be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT HOMA BAY THIS 20TH DAY OF FEBRUARY 2025

OLGA SEWE

JUDGE

