



REPUBLIC OF KENYA



In re Estate of Nathan Muchina Shosia (Deceased) (Succession Cause 553 of 2010) [2025] KEHC 2571 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 553 OF 2010
SC CHIRCHIR, J
FEBRUARY 20, 2025**

IN THE MATTER OF THE ESTATE OF NATHAN MUCHINA SHOSIA (DECEASED)

BETWEEN

**DANIEL KOIKOI MUCHINA 1ST PETITIONER
PETER SHITANDA MUCHINA 2ND PETITIONER**

AND

**NIPHER MWACHI 1ST RESPONDENT
JOSHUA PHILIMONA MBAKAYA 2ND RESPONDENT**

RULING

1. This cause relates to the Estate of the late Nathan Muchina Shosia (deceased). A grant of representation to his estate was issued to Daniel Koikoi Muchina and Peter Shitanda Muchina on 27th November, 2013. The grant was later confirmed and the Assets of the estate were shared out as hereunder;
 - a). LR No. S/Kabras/Chemuche/1000
 - Daniel Koikoi Muchina 0.75 HA
 - Epaintus Amwayi Agoi 0.52 HA
 - Martin Songoro Paul 0.54 HA
 - b). LR No. S/Kabras/Chemuche/1001
 - Nipher Mwachi 0.70 HA
 - Joshua Philimona Mbakaya 0.50 HA
 - c). LR No. S/Kabras/Chemuche/1002



Timothy Nyangusi 0.53 HA

Loice Andaswa Nyagusi 0.30 HA

2. The petitioner has now filed the Application dated 11th November, 2021 seeking to rectify the grant to substitute Nipher Mwachi and Joshua Philimona Mbakaya as beneficiaries in respect of the land parcel No.S/Kabras/Chemuche/1001 with Joseph Mbakaya Wanganyi.
3. The grounds upon which rectification is sought are that the respondents herein had misled the Administrators that they had purchased land from the deceased when the correct position is that it was one Joseph Mbakaya Wanganyi
4. The application is opposed by the respondents vide their preliminary objection dated 14th October,2022, in which they have pleaded that this court lacks jurisdiction to entertain this Application as the subject matter of the Application being parcel No. S/ Kabras / Chemuche/ 1001 has since been sub- divided and individual titles taken out for each beneficiary.

Determination

5. Rectification of grants is governed by Section 74 of the [Law of Succession Act](#). The section provides as follows:

“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”

6. Rectification of a grant of Letters of Administration is therefore limited to matters set out under Section 74 of the [Law of Succession Act](#) and the procedure in respect thereof is provided under Rule 43 of the [probate and Administration Rules](#).
7. The law on rectification of grant is well settled. Rectification deals specifically with correction of errors 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.
8. The purpose of rectification was well articulated by Justice Musyoka in the case of [Re Estate of Charles Kibe Karanja \(Deceased\)](#) [2015] eKLR, where the Judge stated as follows:

“It goes without saying that the provisions in Section 74 are on alteration of grants of representation, not certificates of confirmation of grant. A certificate of confirmation of grant is not a grant of representation. In probate practice, the term “confirmed grant” has gained currency and it is understood by some to mean the certificate of confirmation of grant. It is a misconception. The certificate issued upon a grant being confirmed does alter the grant of representation made in the matter. It does not replace the grant of representation, and it is not the confirmed grant. It is an instrument to certify that the grant made in the matter has been confirmed. In short it is the evidence of the confirmation of the grant. From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the court through Section 74 of the [Law of Succession Act](#), for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for



amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate.

A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or 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 effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should 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.

Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the court has confirmed the grant or a heir or survivor of the deceased who had previously been previously unheard of materializes after distribution, the court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.”

9. The petitioner in this case is not seeking to correct any errors. He is seeking to bring in a new beneficiary and displace other beneficiaries. This is a substantive issue which affect the rights of beneficiaries who have been ascertained and given a share of the estate. The proposed move cannot be rectification by any stretch of interpretation of section 74 of the Law of succession Act. As articulated in the above cited decision , the Applicant’s remedy lies elsewhere, but not rectification.
10. The Application is without merit. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT ISIOLO ,VIA MICROSOFT TEAMS , THIS 20TH DAY OF FEBRUARY 2025.

S. CHIRCHIR

JUDGE.

In the presence of :-

Godwin Luyundi- Court Assistant.

