



REPUBLIC OF KENYA



**In re Estate of Philip Mathenge Muraya (Deceased) (Family Cause  
145 of 2007) [2025] KEHC 2167 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2167 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
FAMILY CAUSE 145 OF 2007  
MA ODERO, J  
FEBRUARY 14, 2025  
IN THE MATTER OF THE ESTATE OF PHILIP MATHENGE MURAYA**

**RULING**

1. Before this court for determination is the Summons dated 28<sup>th</sup> February 2023 by which the Applicant Stephen Muriithi Mwema seeks the following orders:-
  - “(a) The name of the beneficiary described as Philip Mathenge Mwema in the Certificate of Confirmation of Grant dated 4<sup>th</sup> May 2021 be rectified to read Philip Mathenge Muemar.
  - (b) The Court be pleased to allow and authorize the Deputy Registrar of this Court to execute all documents, forms and processes necessary in the place of the Respondent and also other beneficiaries aligned to the Respondent in order to give effect by way of transmission the Certificate of Confirmation of Grant.
  - (c) The Court be pleased to allow the Land Registrar or any other officers seized with the quasi-judicial role in effectuation of the transmission to dispense with the production of documents held by the Respondent and also the other beneficiaries photograph, copy of ID and PIN Certificate in order to effectuate the Grant.
  - (d) The court be pleased to allow the Application to recover such costs to include survey and registration fees occasioned by the Respondent’s failure to comply with the certificate of confirmation of grant.
  - (e) Costs of this application be provided for.”
2. The Application which was premised upon Section 74, *Law of Succession Act*, Rules 43 and 73 of the *Probate and Administration Rules* and was supported by the Affidavit of even date sworn by the Applicant.



3. The Respondent Newton Muthui Mathenge filed Grounds of Opposition dated 24<sup>th</sup> October 2024.
4. The application was canvassed by way of written submissions. The Applicant did not file any submissions. Counsel for the Applicant Mr. Nderi stated that they would rely entirely on the averments in their application.
5. Mr. Kahiga for the Respondent did not file any Replying Affidavit and did not file any written submissions.

### **Background**

6. This succession cause relates to the estate of the late Phillip Mathenge Muraya who died intestate 31<sup>st</sup> July 2002. A copy of the Death Certificate Serial Number 760897 is in the Court file.
7. Following the demise of the Deceased a Grant of letters of Administration was on 13<sup>th</sup> November 2018 issued to Stephen Muriithi Mwema (the Applicant herein). The Protestor Newton Muthui Mathenge, then filed a Protest dated 8<sup>th</sup> July 2009. That protest was dismissed for want of prosecution.
8. The Grant was duly confirmed on 4<sup>th</sup> May 2021. A certificate of confirmed Grant was duly issued to the Administrator of the estate.
9. The Applicant seeks to rectify the name of the Administrator as listed in the confirmed Grant. The Applicant further avers that the protestor has deliberately sought to forestall the final distribution of the estate by filing numerous applications and by refusing to co-operate with the Administrator in attesting/signing documentation required to facilitate transmission and transfer of estate assets.
10. The Applicant therefore prays that the Hon. Deputy Registrar be directed to sign the said documents on behalf of the Protestor.

### **Analysis and Determination**

11. I have carefully considered the application on record and the Grounds of opposition filed by the Respondent.
12. Prayer No 1 of the applications seeks that the name of the beneficiary Phillip Mathenge Mwema be rectified to read Philip Mathenge Muemar. In other words the Applicant is seeking rectification of the Grant in order to reflect the correct names of the particular beneficiary.
13. Rectification of grant is provided for in Section 74 of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rule 43(1) of the *Probate and Administration Rules*, Section 74 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 representation, whether before or after confirmation, may be altered and amended accordingly.

14. Rule 43(1) provides:-

Where the holder of the 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 and 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.



15. An error is literally a mistake in the names descriptions of any person or thing. *In Re Estate of Kabiga Mwatbi (Deceased)* [2022] eKLR Hon. Lady Justice Florence Muchemi observed as follows:-

Rectification of grant of letters of administration is limited to matters set out in section 74 of the *Law of Succession Act* in principal to corrections of error which the court may order without changing the substance of the grant. These include 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. An error which is envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of person or things. As we held in *the matter of the Estate of Hasalon Mwangi Kabero* [2013] eKLR.

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 of 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.

16. This prayer for rectification of the confirmed Grant was not opposed by the Respondent. In the consent dated 28<sup>th</sup> February 2023, the name of the beneficiary is indicated Philip Mathenge Muemar. No evidence has been brought to show that this is not the name of the particular beneficiary.
17. In the circumstances I allow Prayer (a) of the Summons dated 28<sup>th</sup> February 2023.
18. Regarding Prayers (b) (c) (d) seeking to have the land transmission documents executed by the Hon Deputy Registrar the Court will at this point reserve its ruling on those prayers pending certain clarifications. In the absence of a substantial replying Affidavit by the Respondent and mindful of the fact that it is the duty of this Court to ensure that the estate of the Deceased is distributed to the rightful (genuine) beneficiaries I would need to seek certain clarifications regarding who has declined to sign the documents and why.
19. This being a family matter I make no orders on costs.

**DATED IN NYERI THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025.**

.....

**MAUREEN A. ODERO**

**JUDGE**

