



In re Estate of Benjamin Thiong’o alias Benjamine Thiong’o Kiai alias Benjamin Kiai Thiong’o (Deceased) (Succession Cause 2730 of 2003) [2025] KEHC 1369 (KLR) (Family) (13 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1369 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2730 OF 2003
EKO OGOLA, J
FEBRUARY 13, 2025
IN THE MATTER OF THE ESTATE OF KIAI BENJAMIN THIONG’O ALIAS BENJAMINE THIONG’O KIAI ALIAS BENJAMIN KIAI THIONG’O (DECEASED)

IN THE MATTER OF
WINNIE WAMBUI MUTHIGA APPLICANT

RULING

1. The summons for rectification before this court is dated 12th August 2024. The applicant seeks rectification of the Certificate of Confirmation of Grant to include Loc. 9/Ichichi/T200/22 as part of the estate of the deceased and for it to be distributed to Serah Wangari Thiong’o. On record is a consent from Winnie Wambui Muthiga and Stephen Muoria Thiong’o.
2. Rectification of grants 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:

“74. Errors may be rectified by court:

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.”



3. Rule 43(1) provides as follows:

“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 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.”

4. From the language of section 74 and Rule 43(1), the scope of rectification of grants of representation is limited to errors in names and descriptions of property. The inclusion of assets of the deceased does not fall within the meaning of the aforementioned provisions.

5. 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 effected 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.

6. However, this Court is still clothed with jurisdiction to issue orders that will meet the end of justice. Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

7. The upshot is that the Summons for Rectification dated 12th August 2024 are allowed. Certificate of Confirmation of Grant to be rectified forthwith to include Loc. 9/Ichichi/T200/22 as part of the estate of the deceased and for it to be distributed to Serah Wangari Thiong’o. Costs be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Ojienda for the Applicant

Ms Gisiele M court Assistant

E. OGOLA J.

