



REPUBLIC OF KENYA



**In re Estate of Obilo Odanga (Deceased) (Succession Cause
3 of 2020) [2025] KEHC 3415 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 3 OF 2020
WM MUSYOKA, J
MARCH 21, 2025
IN THE MATTER OF THE ESTATE OF OBILO ODANGA (DECEASED)**

RULING

1. The grant herein was confirmed on 15th November 2023, based on an application, dated 16th October 2023. A certificate of confirmation of grant was duly issued thereafter, dated 22nd November 2023.
2. One of the administrators of the estate, identified as the 1st administrator, has come back to court, by a summons, dated 25th June 2024, seeking rectification of the certificate of confirmation of grant, premised on section 74 of the *Law of Succession Act*, Cap 160, Laws of Kenya, and rule 43 of the *probate and Administration Rules*.
3. James Noah Mambeli has opposed that proposed rectification and sworn an affidavit on 4th October 2024.
4. The beneficiaries were heard viva voce on the application. 4 of them testified, 1 in support and 3 in opposition.
5. Written submissions were also filed. I have read through them, and noted the arguments made.
6. The relief known as rectification, is provided for under section 74 of the *Law of Succession Act*, and the process for it is provided for under rule 43 of the *Probate and Administration Rules*. The errors, correctable or rectifiable under section 74, are with respect to names and descriptions, or in the setting out of the time and place of the death of the deceased, or, with respect to a limited grant, the purpose of such limited grant.
7. There are 2 things. One, rectification can only be sought and obtained, with respect to a grant of representation, whether of a grant of probate or of letters of administration, or any of the limited grants, and nothing else. A certificate of confirmation of grant is not a grant of representation, but a certificate that the grant of representation has been confirmed. They are not one and the same thing, for the grant pre-dates or precedes the certificate. A certificate of confirmation of grant is not one of the documents that section 74 envisages for the purposes of rectification.



8. The Law of Succession Act does not define a grant. What it does is to describe and provide for forms of grants, at sections 53 and 54. The Probate and Administration Rules does define or interpret what a grant is, at rule 2, where it says “grant” means a grant of representation, whether a grant of probate or of letters of administration with or without a will annexed, to the estate of a deceased person.”
9. The second thing, there is a limited range of errors or mistakes that are correctable or rectifiable under section 74. There are only 2 categories, for full grants. These are set out in the provision. It is about a mistake or error in names and descriptions. A proposed distribution of an estate is not a name, nor a description. Rectification is about correction of an error in setting out the time and place where the deceased died. The application before me has nothing to do with the time and place of the death of the deceased. Let me not talk about a limited grant, for here we are dealing with a full grant.
10. I now set out, verbatim, what section 74 of the Law of Succession Act provides, for avoidance of doubt:
“74. Errors may be rectified by court
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, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”
11. The issues raised by the applicant have nothing to do with the errors specified in section 74. In fact, it is not even about errors at all. What the applicant proposes is a re-distribution of the estate. If he was unhappy, with the orders the court made on distribution, he should have appealed against those orders. If he felt that there was an error on the face of the decision to confirm the grant, or he had discovered new evidence, which was not available when the grant was confirmed, he should have applied for review, pursuant to Order 45 rule 1 of the Civil Procedure Rules, as adopted by rule 63 of the Probate and Administration Rules.
12. I note that the proposed alteration of the distribution ordered by the court is unpopular, for the other beneficiaries have not consented to it, and have vigorously objected to it.
13. The application dated 25th June 2024 is not well thought out, and it is filed in abuse of the court process. It has no merit, and I hereby dismiss it. As this is a family matter, I shall not award costs. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED, AT BUSIA, THIS 21ST DAY OF MARCH 2025.

W. MUSYOKA

JUDGE

Arthur Etyang, Court Assistant.

Advocates

Mr. Barasa Ouma, instructed by BM Ouma & Company, Advocates for the 1st administrator.

Mr. Arnold Magina, instructed by Kibet Adoli & Magina, Advocates for the 2nd administrator.

