



In re Estate of Lolo Inzoberi Indika alias Lolo Inzobeli (Deceased) (Succession Cause 354 of 2014) [2025] KEHC 5077 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 354 OF 2014
S MBUNGI, J
APRIL 24, 2025**

BETWEEN

PATTERSON MULATI INZOBELI PETITIONER

AND

JULIUS KOMBO LOLO ALIAS OMURAMBI LOLO RESPONDENT

RULING

1. Before this Court for determination is the summons for Rectification of Grant dated 16th December 2020, expressed to be brought under section 74 of the [Law of Succession Act](#), Rule 43,63, and 73 of the Probate and Administration Rules, by which the petitioner/applicant seeks the following orders.
 - a. That the certificate of confirmation of grant issued herein be rectified /amended and a fresh / amended one be issued in terms of paragraph 6 of the supporting affidavit filed herewith
 - b. That the court does make such orders
 - c. That the costs of this application be provided for.
2. The application was supported by the Affidavit of even date, sworn by the applicant stating that he was issued with the certificate of the confirmed grant for the estate of the deceased.
3. He avers that he is unable to complete the process of registration in his name and that of the other beneficiaries since one of the beneficiaries is currently deceased.
4. He states that the deceased was survived by one son, Joshua Akhulunya Muchenya, whom he prays substitutes his late father on the certificate of confirmation of grant to allow the registration of the titles in the name of the beneficiaries.
5. He prays that a fresh grant be issued with the said changes.



6. In their replying affidavit dated 13th August 2024, the respondent claimed that the application by the petitioner was made in bad faith and set to undermine the ruling by Hon. W.M Musyoka dated 1/8/2023 where the court ordered that the share of the deceased Peter Muchenya Lolo to devolve in his estate to be distributed in succession proceedings initiated in his name by his successors.
7. They claimed that the deceased also has his wife as his beneficiary, who is still alive and just not the one son, as alluded to by the petitioner.
8. He stated that the application is misconceived and ought to be dismissed.
9. The parties opted to rely on their pleadings, and no submissions were filed.

Analysis And Determination.

10. Having considered pleadings herein, the sole issue for determination by this court is whether to rectify the confirmed grant dated 21st September 2023.
11. 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:

Errors may be rectified by the 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.”

12. 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.”

13. In *Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR, the Court held as follows:

“...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 for 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. The remedy of review of court orders is not directly provided for in the *Law of Succession Act* and the Probate and Administration Rules, but it is imported into probate and practice by Rule 63 of the Probate and Administration Rules, which has adopted a number of procedures from the Civil Procedure Rules.”



14. In re Estate of Nganga Kamau (Deceased) (Succession Cause 432 of 2015) [2024] the court observed as follows;

“From the language of Section 74 of the *Law of Succession Act* and Rule 43(1) of the Probate and Administration Rules, the scope of rectification of grants of representation is limited to 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. I may add that such other minor errors in that genre could also be rectified. Other major or substantial issues should be addressed through application for review of judgment or appeal.”

15. According to section 74 of the Act, rectification is allowed to correct a mis-description of a property or to correct a name which has not been fully or properly described in the Grant.

16. I have perused the amendments intended to be made and the rectifications sought to be made by this summons. The amendments sought to be made are central and far-reaching, as it is proposed to include the family of Joshua Akhulunya as beneficiaries of the estate.

17. There is an intention to alter not only the beneficiaries to the estate, and this is not what was envisaged by section 74. Rectification of a Grant is only permissible to cure minor errors, mistakes, and irregularities in the Grant. Rectification cannot be used to fundamentally alter the character of the Grant.

18. The applicant cannot hide under the guise of alteration to change the core of the grant if he intends to add or substitute one of the beneficiaries, he should apply to review the original Grant and apply that the same be re-issued with the proposed changes in the mode of distribution of the estate. The consent of ALL the beneficiaries must be obtained once again.

19. In conclusion, I find no merit in this application. The summons for rectification of the Grant dated 23rd October 2023 is dismissed in its entirety.

20. Each party to bear its own cost of the application for this is a family matter.

21. Right of Appeal 30 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF APRIL, 2025

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Albright Sunguti

Ms Nafuye holding brief for Getanda for the respondent online.

Others Absent.

