



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Jonah Kiprotich arap Tuwei (Deceased) (Succession Cause 108 of 2019) [2025] KEHC 8164 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 108 OF 2019
RN NYAKUNDI, J
JUNE 12, 2025**

**IN THE MATTER OF THE ESTATE OF JONAH KIPROTICH ARAP TUWEI (DECEASED)
SUMMONS FOR RECTIFICATION OF GRANT
UNDER SECTION 74 OF THE SUCCESSION ACT, RULE
43 OF THE PROBATE AND ADMINISTRATION RULES**

RULING

1. What is pending before me for determination is Summons for Rectification of Grant Application dated 4th March 2025 where the Applicants are seeking the following orders:
 - a. That this Honourable Court be pleased to rectify/amend the Certificate of Confirmation of Grant made on 17th April 2024 as follows:
 - a. That the acreage of the joint beneficiaries M. Pardy Murunga Wabuge And Benard Nyongesa Wabuge of the last schedule of grant in land title No. Waitaluk/Kapko Block 1/ Kibormos/226 was erroneously indicated as 1 acre in the mode of distribution and subsequent grant instead of 1.5 acres.
 - b. That the acreage of the said joint beneficiaries M. Pardy Murunga Wabuge And Benard Nyongesa Wabuge be rectified in the grant to read 1.5 acres instead of 1 Acre.
 - b. That the costs of this application be on cause.
2. The Application is based on the grounds on the face of it among others;
 - a. That the applicants are administrators of the above estate
 - b. That the Certificate of Confirmation of Grant herein was issued on 17th April 2024
 - c. That the said grant is yet to be executed



- d. That the joint beneficiaries herein M. Pardy Murunga Wabuge And Benard Nyongesa Wabuge were erroneously given 1 acre instead of 1.5 acres.
 - e. That it is therefore imperative that the grant herein be rectified to reflect the acreages as per prayer b above.
3. The Application is supported by the annexed affidavit dated 4th March 2025 sworn by Eliud Kipkemboi Rotich And Japhet Kiprob Rotich in which they aver as follows;
- a. That we are the administrators of the above estate
 - b. That the Certificate of Confirmation of Grant in this matter was issued on 17th April 2024.
 - c. That the said Grant is yet to be executed
 - d. That the share and acreage of the joint beneficiaries M. Pardy Murunga Wabuge And Benard Nyongesa Wabuge were erroneously indicated as 1 acre instead of 1.5 acres.
 - e. That the error was inadvertently occasioned on our part when giving instructions to our advocate on record to prepare summons for confirmation of Grant.
 - f. That we would like the said grant be rectified in respect of the acreages of the said M. Pardy Murunga Wabuge And Benard Nyongesa Wabuge who appear in the last schedule of land title No. Waitaluk/Kapko Block 1/ Kibormos/226 to reflect 1.5 acres instead of 1 acre.
 - g. That no beneficiary is opposed to the said amendment as it was erroneous.
 - h. That the application herein will not prejudice anybody if allowed.

Analysis and Determination

4. I have considered the application and the affidavit in support of the same. There is only 1 issue manifest for determination; Whether the court should order the rectification of the grant. I will proceed to determine these issues.

Whether the Court should order the rectification of the grant

5. The jurisdiction of this court to order rectification of grant is granted by Section 74 of the [Law of Succession Act](#). The Section provides:

“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.”

6. The marginal notes under the section states that errors may be rectified by the court. On the other hand, Rule 43(1) of the Probate and Administration Rules provides:

“Where the holder of grant seeks pursuant to 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 places 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.”



7. From the wording of these provisions which deal with rectification of grant, it is clear that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased's death and place of death of the deceased. In general terms rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors are what rectification seeks to address. In the matter of the Estate of Geoffrey Kinuthia Nyamweinga deceased [2013] eKLR the court stated.

“The law on rectification or alteration of grants is Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules-What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general....”

Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the Law of Succession Act, the applicant ought to approach the court under order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this Provision-Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”

8. Other matters which may substantially affect the grant are best addressed through an application for review of the Judgment or appeal. The applicants seek rectification of acreage of the joint beneficiaries M. Pardy Murunga Wabuge And Benard Nyongesa Wabuge of the last schedule of grant in land title No. Waitaluk/Kapkoi Block 1/ Kibormos/226 because it was erroneously indicated as 1 acre in the mode of distribution and subsequent grant instead of 1.5 acres. This court had relied on the affidavit of the applicants in support of summons for confirmation of grant.

9. I take note that the Applicants have accepted that the error was inadvertently occasioned on their part when giving instructions to their advocate on record to prepare summons for confirmation of Grant. I find that the error on the description of this property which was erroneous is an error which this court can rectify as per the provisions of section 74 of the Law of Succession Act.

10. The grant should therefore be rectified to indicate that the acreage of the joint beneficiaries M. Pardy Murunga Wabuge And Benard Nyongesa Wabuge as stated in the last schedule of the grant for land title No. Waitaluk/Kapkoi Block 1/Kibormos/226, is 1.5 acres instead of 1 acre.

11. There shall be no order as to costs.

12. An amended grant to issue with the foregoing changes.

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 12TH JUNE 2025

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R. NYAKUNDI

JUDGE

