



REPUBLIC OF KENYA



**In re Estate of Rebecca Mukuongari (Deceased) (Succession Cause  
94 of 2006) [2025] KEHC 9763 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9763 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 94 OF 2006**

**SM GITHINJI, J**

**JULY 2, 2025**

**IN THE MATTER OF THE ESTATE OF REBECCA MUKUONGARI (DECEASED)**

**IN THE MATTER OF**

**JULIUS KINOTI ..... 1<sup>ST</sup> PETITIONER**

**SABELLA MUKOMERU NDEGE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**JOHN MURITHI KINOTI ..... INTERESTED PARTY**

**RULING**

1. For determination is the summons for rectification of grant dated 19/5/2021 pursuant to section 74 of the *Law of Succession Act* and Rules 43 and 73 of the Probate and Administration Rules, seeking that:
  1. Spent
  2. The certificate of Confirmation of Grant issued to the Petitioners i.e Sabellah Mukomeru Ndege And Julius Kinoti On 23<sup>Rd</sup> July 2007 be rectified in the following respects.
  3. The name of the 1<sup>st</sup> petitioner i.e Julius Kinoti be removed from the grant since he died on 10/11/2019 and this Honorable court be pleased to allow me be the only administrator in the cause to enable us finalize the process of distribution at the Land's Office.
  4. The balance in the name of Julius Kinoti also be shared as per the distribution in the supporting affidavit.
  5. Costs be in the cause.
2. The application is supported by an affidavit sworn by Sabellah Mukomeru Ndege, the 2<sup>nd</sup> petitioner herein, on even date. She learnt with disbelief that her brother, the 1<sup>st</sup> petitioner herein, did not give her any share of her mother's estate, yet she is a rightful beneficiary. Upon the passing of the 1<sup>st</sup> petitioner,



she now prays for the re-distribution of the estate as shown at paragraph 10 thereof. She accused the deceased petitioner of taking advantage of her illiteracy to dispose of several portions of the estate.

3. The interested party swore a replying affidavit on 21/10/2021 in opposition to the application. He averred that he was a son, a nephew and a grandson to the 1<sup>st</sup> petitioner (now deceased), the 2<sup>nd</sup> petitioner and the deceased herein. He accused the petitioners of leaving out a daughter to the deceased herein namely Salome M'Muthamia (deceased). According to him, the deceased had distributed her estate to her children during her lifetime. He supports the rectification of the grant but he has made his own proposal on re-distribution of the estate.
4. The 2<sup>nd</sup> petitioner swore a further supporting affidavit on 22/2/2022.
5. The application was canvassed by way of written submissions which were duly filed by counsel for both parties.

### **Disposition**

6. The issue for determination is whether a case has been made to warrant rectification of the grant issued to the petitioners.
7. I am alive to the fact that the rectification of a grant contemplated under the *Law of Succession Act* is in respect of errors and mis-descriptions only.
8. Section 74 of the *Law of Succession Act* provides as follows: “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.”
9. Rule 43 (1) of the Probate and Administration Rules provides that; “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 time or place of the 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 issued.”
10. That position was reiterated in re estate of Charles Kibe Karanja (Deceased) [2015] eKLR, where the court (W. Musyoka J) restated that; “It goes without saying that the provisions in Section 74 are on alteration of grants of representation, not certificates of confirmation of grant. A certificate of confirmation of grant is not a grant of representation. In probate practice, the term “confirmed grant” has gained currency and it is understood by some to mean the certificate of confirmation of grant. It is a misconception. The certificate issued upon a grant being confirmed does alter the grant of representation... It does not replace the grant of representation...it is not the confirmed grant. It is an instrument to certify that the grant made in the matter has been confirmed...it is the evidence of the confirmation of the grant. From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the court through Section 74 of the *Law of Succession Act*, for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. 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 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.”

11. The 2<sup>nd</sup> petitioner contends that following the death of the 1<sup>st</sup> petitioner on 10/11/2019, it is imperative that the grant jointly issued to them be rectified.
12. Section 81 of the *Law of Succession Act* is a self-executing provision which empowers a surviving administrator to complete administration of an estate as follows: “Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them: Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.”
13. In re Estate of Shadrack Githinji Njarui (Deceased) [2021] eKLR, the court (L. Njuguna J), encapsulated that; “It is of importance to note that only one administrator passed on while the other two are still alive. Under Section 81 of the *Law of succession Act*, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones.”
14. I find that the death of the 1<sup>st</sup> petitioner did not create a vacuum in the administration of the estate, since all the powers and duties vested in the 2<sup>nd</sup> petitioner to complete the administration of the estate by dint of sections 81 and 83 of the *Law of Succession Act*.
15. The 2<sup>nd</sup> petitioner further seeks rectification of the grant whose effect is to essentially re-distribute the estate of the deceased. In all honesty, that kind of amendment is not envisaged under the provisions of section 74 of the *Law of Succession Act*, because it has far reaching implications which ultimately alter the mode of distribution as decreed by the court during confirmation of the grant.
16. The rectification of the grant to provide for the 2<sup>nd</sup> petitioner, who had not initially been provided for in the confirmed grant, goes beyond the scope of section 74 of the *Law of Succession Act*.
17. In the same breath, the re-distribution of the share of the deceased petitioner to his surviving heirs is inconceivable, because the said heirs ought to take out letters of administration in respect of the estate of their deceased father and proceed to administer his estate.
18. The upshot from the foregoing considerations is that the application dated 19/5/2021 is in want of merit and it is accordingly dismissed.

**DATED AND DELIVERED AT MERU 2<sup>ND</sup> THIS JULY, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

Ms. Wambulwa for the Petitioner

Mr. Gichunge for the Interested Party (absent).

