



**In re Estate of Elkana Choro Osuka (Deceased) (Succession Cause
252 of 1994) [2025] KEHC 12946 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 252 OF 1994
A MABEYA, J
SEPTEMBER 19, 2025**

BETWEEN

MESHACK OWIRA OSUKA PETITIONER

AND

JACOB OGADA OSUKA 1ST PROTESTOR

BERTHA ANYANGO 2ND PROTESTOR

DICKENS CHARLES 3RD PROTESTOR

BRIAN NATHAN 4TH PROTESTOR

RULING

1. This is a ruling on the Summons dated 8/7/2024 for the Rectification of Grant issued to the Petitioner on the 15/11/2017. The grounds were that; there was an error in the names of the beneficiaries as listed on the Certificate of Confirmation of Grant vis a vis their names in their Identity Cards. That further, there was need to substitute deceased beneficiaries with their heirs.
2. The application was opposed by the affidavit dated 19/5/2025 sworn by Jacob Ogada Osuka, one of the Protestors herein. It was deposed that the Petitioner had concealed material facts relating to properties of the deceased estate contrary to Section 7 (d) of the Probate and Administration Rules. Specifically, that the Petitioner had never disclosed the full inventory of the deceased's assets that include land parcels Kisumu/Karateng/118, 1029, 1265 and Kakamega/Butsotso/5514.
3. That the Petitioner failed to provide an account of all rental income from Kakamega/Plot 136/Block I/53 and had been mismanaging the deceased's estate particularly land parcels No. Kisumu/Karateng/1389 and partly sold parcel No. Kisumu/Karateng/1618. That the court should order that 2 more administrators from the 1st and 4th house be added for accountability and transparency.



4. In rejoinder, the Petitioner filed a further supporting affidavit sworn on the 20/6/2025 in which he deposed that all the allegations raised by the Objector were dismissed by a ruling made on the 4/4/2024 and the Objector was essentially inviting the court to review its own decision.
5. That the allegations that some assets of the deceased were left out of the proceedings remain unproven and specifically Kisumu/Karateng/1265 belonged to one Marrion Sesoa Omollo.
6. At the hearing of the application, it was submitted on behalf of the Protestors that deceased persons were included as beneficiaries of the deceased during the Confirmation of the Grant and that the Petitioner inequitably distributed the deceased's estate in his favour to the detriment of other beneficiaries.
7. The law on rectification off Grants is found in section 74 of the *Law of Succession Act* which 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.”
8. Rule 43(1) of the Probate and Administration Rules provides: -

“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 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.”
9. In re Estate of Henry Mwithimbu Karigu (Deceased) (2020) eKLR, the court held: -

“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.”
10. I have considered the record and the history of this case. Other than seeking to rectify the errors in the names of the beneficiaries listed in the application, the Petitioner seeks to substitute some of the deceased beneficiaries with their respective heirs.
11. By rectifying the Grant as prayed, this court would be making sweeping and fundamental changes to the mode of distribution and it would go to the core of the distribution of the estate land and affect it. The same could not be effected through a rectification of the Grant.
12. Substitution in this case does not equate to alteration or amendment of the certificate of confirmation of grant but rather the changes are fundamental not superficial. They go to the core of the distribution.
13. In re Estate of Charles Kibe Karanja (Deceased) 2015 eKLR, the court held as follows: -

“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 affected 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.”

14. The upshot of the above is that it is my finding that the changes proposed by the Petitioner in prayer no. 2 of the Motion do not fall under the ambit of section 74 of the Law of Succession Act. However, prayer nos. 1(a) to (k) and prayer no. 3 are grantable.
15. I have also considered the Objections by the protestors herein, it is clear that they are not satisfied with the confirmed grant. I have very closely perused through the provisions of the Law of Succession Act, and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders.
16. Sections 71, 72 and 73 of the Law of Succession Act, which deal with confirmation of grants, do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with flaws in the confirmation process.
17. In the absence of any provision as aforesaid, for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal or review, to the extent that the same is permissible under the Law of Succession Act.
18. Where a party feels that a Confirmed grant is not serving the purpose for which it was made, they are free to move court in accordance with section 76 of the Law of Succession Act to have the grant revoked. The opposition by the objectors is an attempt to re-open the matter which have long been settled by the order and ruling of Majanja J and Aburili J dated 15/11/2017 and 4/4/2024, respectively.
19. Consequently, I find that the application dated 8/7/2024 to be partially successful. I grant prayer nos. 1(a) to 1(k) and 3 of the Motion but dismiss prayer no. 2. Let the administrators of the estates of those who passed on apply vide a separate Succession Cause of their own to succeed those estates of the deceased beneficiaries.
20. Let the administrator proceed and effect the distribution as had been determined by Majanja J. In the meantime, the orders of Aburili J directing the administrator to account still stands.

It is hereby so ordered.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

