



REPUBLIC OF KENYA



**In re Estate of Saul Nyareru Bosire (Deceased) (Succession Cause 1 of 2017) [2024] KEHC 1379 (KLR) (12 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1379 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
SUCCESSION CAUSE 1 OF 2017  
TA ODERA, J  
FEBRUARY 12, 2024  
IN THE ESTATE OF SAUL NYARERU BOSIRE (DECEASED)**

**IN THE MATTER OF**

**ESTHER GACHOKI NYARERU ..... 1<sup>ST</sup> APPLICANT**

**ANGELINE MORAA NYARERU ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. By a Summons for Rectification and/or Amendment of Certificate of Confirmation of Grant dated 24.7.2023, the Applicants sought the following orders: -
  - a. Spent.
  - b. That the Honourable Court be pleased to rectify/amend the Certificate of Confirmation of Grant dated 25<sup>th</sup> October 2021.
  - c. That pursuant to prayer (1) above being granted, the Certificate of Confirmation of Grant be amended/rectified accordingly as per the Consent for Mode of Distribution and Rectification/Amendment of Certificate of Confirmation of Grant attached.
  - d. That costs of this application be costs in the cause.
2. The grounds on the face of the Application are that the Deceased died on 4<sup>th</sup> March 2004. The Petitioners sought for and obtained Grant of Letters of Administration. The size of the property was at the time unknown which only became apparent after instructing a licensed surveyor. The Applicant, Esther Gachoki Nyareru, had a grandson who was diagnosed with Leukemia and therefore in urgent need of medical treatment abroad.
3. The Application was supported by an Affidavit sworn by Esther Gachoki Nyareru. She deponed that she was one of the Administrators of the Estate. She deponed that at the time of confirmation, the Applicants and the Beneficiaries were not aware of the errors in the size of the property and only learnt



of the anomalies after engaging a Licensed Surveyor. She deponed that she had a grandson diagnosed with Leukemia and in need of urgent medical treatment abroad.

### Determination

4. I have considered the Application, the Affidavit in Support, the Annexures and the “consent” between both counsel on record. The Application was unopposed.
5. The Application was filed under Section 74 of the *Law of Succession*, Cap 160 of the Laws of Kenya.
6. Section 74 of the *Law of Succession Act* provides as follows:
  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.
7. Rule 43(1) of the *Probate and Administration Rules* provides thus:
  43. Rectification of grant.
    - (1) 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.
8. My understanding of Section 74 of the *Law of Succession Act* is that rectification is only for clear matters being errors in names, descriptions, time and place of deceased’s death and the purpose of the grant, where the same is limited.
9. I am further fortified by the numerous decisions touching on the scope of rectification as relates grants that rectification only applies where the errors to be rectified relate to errors in names, date of death, errors in description etc.
10. The Court *in Estate of Hasalon Mwangi Kabero* (*supra*) further held that an error is essentially a mistake. That mistake must however fall within the ambit of Section 74 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules*.
11. I note that the Applicant stated that at the point of confirmation, they were unaware of the sizes of the property in question. It only became apparent after seeking the services of a licensed surveyor. This, to me, is a genuine mistake for which the court can rectify
12. I also note that there are some substantial changes in the mode of distribution. For instance, in the Certificate of Confirmation of Grant, Henry Ogega Bosire was to get 6 Acres from Matutu Settlement Scheme/602; but in the current attached mode of distribution, he stands to hold 6 Acres from Matutu Settlement Scheme/602 in trust for the legal heirs of the deceased. This of course is a fundamental change that cannot reasonably be resolved by way of rectification.
13. I further note that the Consent attached to the Application is not signed and therefore cannot be said to emanate from the consensus of the Beneficiaries and Applicants. This is obviously vital noting as a consent was recorded that informed the Court when making the said orders.



14. The application herein seeks to amend the certificate of confirmed grant and to redistribute the estate. The application is within the ambit of Section 74 of the *Law of succession Act* and Rule 43 of the *Probate and administration Rules*. However, since the application goes to the root of distribution and the “alleged consent dated 24.7.23” has not been signed by any beneficiary it would be fair and just that the beneficiaries attend court to confirm the proposed changes before this court issues orders on the instant application.
15. Mention on 12.6.24 all beneficiaries to attend court.
16. There shall be no orders as to costs.

**DATED, DELIVERED AND SIGNED AT KISII THIS 12<sup>TH</sup> DAY OF FEBRUARY 2024.**

**TERESA ODERA**

**JUDGE**

In the presence of:-

N/A for the Applicants

Oigo -Court Assistant

