



REPUBLIC OF KENYA



In re Estate of M’imanene M’mwirichia (Deceased) (Succession Cause 217 of 2004) [2024] KEHC 1178 (KLR) (8 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1178 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 217 OF 2004
TW CHERERE, J
FEBRUARY 8, 2024**

**IN THE MATTER OF
ALICE NJIRU MUCHEKE PETITIONER**

RULING

1. By summons dated 06th December, 2023, Alice Njiru Mucheke (Petitioner/Applicant) sought orders of rectification of the grant that was issued on 13th February, 2014 to remove LR. No.870 Upper Mikumbune and replace the same with deceased’s assets comprised in LR Nos. Nkuene/U-Mikumbune/1494,1495,1497 and 1498. Applicant additionally seeks that the share due to Samson Mutugi Kimathi be substituted with 0.18 acres in place of 0.18HA and that the share of a beneficiary namely Felix Kinoti M’Manene who died on 19th October,2017 before transmission of the estate be assumed by his wife one Erenester Mbithe Kinoti.
2. I have considered the summons for rectification dated 06th December, 2023 supported by Applicant’s affidavit sworn on 30th November, 2023. The application is not opposed
3. 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 & Administration Rules*. Section 74 provides as follows: -

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.

4. Rule 43(1) provides: -

Where the holder of the 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 and 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.

5. *In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR, the court (Musyoka J) stated that: -

“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 the 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.....”

6. The death of a beneficiary and substitution thereof is not one of the instances envisaged under Section 74 and where rectification can be made.

7. It has been demonstrated by a copies of search certificates that during his lifetime, Deceased caused his land parcel number LR. Nkuene/U-Mikumbune/870 to be partitioned into 5 portions but disposed off one and remained with the following assets which compromise his estate:

1. LR. Nkuene/U-Mikumbune/1494
2. LR. Nkuene/U-Mikumbune/1495
3. LR. Nkuene/U-Mikumbune/1497
4. LR. Nkuene/U-Mikumbune/1498

8. The Certificate of Confirmation of Grant dated 13th February, 2014 distributed LR. Nkuene/U-Mikumbune/870 which was non-existent.

9. Although the beneficiaries have by an undated consent annexed to the supporting affidavit consented distribution of the share for Felix Kinoti M’Manene (now deceased) to his wife, it is the finding of this court that such distribution ought to be determined in a separate cause and not in the estate of his father, the Deceased herein.

10. Consequently, the summons for rectification dated 06th December, 2023 it is allowed in the following terms:

1. LR. Nkuene/U-Mikumbune/1494 shall be distributed to the estate of Felix Kinoti M’Manene (deceased)
2. LR. Nkuene/U-Mikumbune/1495 shall be distributed to Alice Njiru Mucheke
3. LR. Nkuene/U-Mikumbune/1497 shall be distributed to Esther Nchoro Kimathi
4.
 - (a) 1.50 acres of LR. Nkuene/U-Mikumbune/1498 shall be distributed in equal shares to:
 - i. Joyce Karai Silas
 - ii. Lucy Nkatha Kaguru
 - iii. Angelika Peterson Muriuki
 - (b) 0.18 acres of LR. Nkuene/U-mikumbune/1498 shall be distributed to Samson Mutugi Kimathi



5. The Certificate of Confirmation of Grant dated 13th February, 2014 shall be rectified and issued accordingly
6. Mention on 29th April, 2024 to confirm transmission

DATED AT MERU THIS 08TH DAY OF FEBRUARY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Petitioner/Applicant-Ms. Mugo for Gichunge Muthuri & Company Advocates

