



**In re Estate of N’rinkanya Tonyia (Deceased) (Succession Cause  
239 of 1998) [2024] KEHC 4810 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 239 OF 1998  
TW CHERERE, J  
APRIL 18, 2024**

**BETWEEN**

**NKAABU M’RINKANYA ..... APPLICANT**

**AND**

**JOHN M’ GITONGA RINKANYA ..... RESPONDENT**

**RULING**

1. By summons dated 08<sup>th</sup> December, 2023, Nkaabu M’Rinkanya (Objector/Applicant) seeks orders of rectification of the grant that was issued on 23<sup>rd</sup> September, 1999.
2. The application is supported by Objector/Applicant’s affidavit sworn on 08<sup>th</sup> December, 2022 and his further affidavit sworn on 25<sup>th</sup> November, 2023. From the two affidavits, I have deduced that the application is based on the following grounds:
  - a. That deceased wished that his estate comprising of two assets namely Abogeta/U-kiongone/877 and Abogeta/U-kiongone/1158 be shared between his two wives and children
  - b. That the succession cause was filed secretly
  - c. That wives and daughters of deceased were not provided for
  - d. That Petitioner/Respondent allocated himself all the KTDA shares of the deceased
3. By his replying affidavit sworn on 11<sup>th</sup> October, 2023, John M’ Gitonga Rinkanya (Petitioner/Respondent) denies that this cause was filed secretly or that the Objector/Applicant was not notified. He additionally avers that the grant in this cause was confirmed on 24<sup>th</sup> September, 1999 and that the Objector/Applicant is abusing the court process by seeking to overturn the same over 24 years since the confirmation.



## Analysis and Determination

4. I have considered the summons for rectification dated 08<sup>th</sup> December, 2023, the affidavits on record and annexures thereto. I have also considered the search certificates filed herein.
5. 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.
6. 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.
7. Musyoka J in a persuasive decision in *In Re the estate of Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR 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.....”.
8. I fully associate myself with the finding of the learned judge and therefore find that the reason that the grant was obtained secretly and some beneficiaries were not provided for is not one of the instances envisaged under Section 74 upon which an order for rectification can be made.
9. The foregoing notwithstanding, I notice that none of the search certificates filed with the court are in the name of the Objector/Applicant yet he was entitled to 4.075 acres of Abogeta/U-kiongone/877.
10. From the foregoing, it is hereby ordered as follows:
  1. The summons for rectification dated 08<sup>th</sup> December, 2023 is not merited and it is hence dismissed.
  2. John M' Gitonga Rinkanya (Petitioner/Respondent) is hereby directed to within 30 days from today's date, file and serve, evidence to demonstrated that he has transmitted the estate as directed in the Certificate of Confirmation of Grant dated 24<sup>th</sup> September, 1999
  - 3, Mention on 12th June, 2024 to confirm compliance with order (2) above
  4. Each party shall bear its own costs

**DATED AT MERU THIS 18TH DAY OF APRIL 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene



For Objector/Applicant - Ms. Kerubo for Namachanja Wambulwa & Co. Advocates

For Petitioner/Respondent – Ms. Kiema for Nyamu Nyaga & Company Advocates

