



**In re Estate of Ithinji M'imanyara (Deceased) (Succession Cause  
336 of 1994) [2024] KEHC 6237 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6237 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 336 OF 1994  
TW CHERERE, J  
MAY 16, 2024**

**IN THE MATTER OF  
SIMON MWIRIGI M'ITHINJI ..... PETITIONER**

**RULING**

1. The applicant herein moved this court vide an application dated 29<sup>th</sup> January, 2023 and wherein the applicant seeks for the following Orders:
  1. Spent
  2. That this Honorable Court be pleased to further rectify and amend the name of Lucy Mukiri to read Lucy Mukiri Nkoroi and that of Gaichugi Munene (minor) to read Nancy Gaicugi Kagwiria
  3. That this Honorable Court be pleased to further rectify and amend the amended certificate of confirmation of grant dated 13/6/2023 and remove minor in the name Gaichugi Munene and replace the same with nancy gaicugu kagwiria who is an adult and her name appears as such on her National Identification Card.
  4. That this Honorable Court be pleased to further rectify and amend the amended certificate of confirmation of grant and have land parcel Timau/Timau Block 3/147 be distributed to Damaris Wanja, Stella Nkatha and Lucy Mukiri Nkoroi having one share thereof and Nancy Gaicugi Kagwiria the other one half share thereof and removing the name DAVID KIAMBI M'ITHINJI as a beneficiary thereof.
  5. That this Honorable court be pleased to issue any other orders to meet the ends of justice.
  6. That costs for and incidental to this application be costs in the cause.
2. The application is supported by an affidavit sworn by the applicant and is premised on the following grounds:



- a. That the official name for Lucy Mukiri as per her identity card is Lucy Mukiri Nkoroi
- b. That the official name for Gaichugi Munene (minor) as per her identity card is Nancy Gaicugi Kagwiria
- c. That David Kiambi M'ithinji has agreed to cede his interest in land parcel Timau/Timau Block 3/147 to his sisters Damaris Wanja, Stella Nkatha and Lucy Mukiri Nkoroi
- d. That the affected beneficiaries of this deceased's estate have consented to this application
- e. That this application is meant to cure the errors on the names of the beneficiaries and affects only the distribution of the share due to David Kiambi M'ithinji in land parcel Timau/Timau Block 3/147 which he has consented to.

### **Analysis and Determination**

3. Rectification of grant 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.

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.

4. *In the matter of the Estate of Hasalon Mwangi Kabero* [2013] eKLR, the Court stated that; -

“An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error? It would be an error if say, a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.”

5. I have considered the application herein, the supporting affidavit and annexures thereto. I have also considered copies of identity cards and satisfied myself that Lucy Mukiri and Gaichugi Munene (minor) are officially known as Lucy Mukiri Nkoroi and Nancy Gaicugi Kagwiria respectively.
6. That David Kiambi M'ithinji has agreed to cede his interest in land parcel Timau/Timau Block 3/147 to his sisters Damaris Wanja, Stella Nkatha and Lucy Mukiri Nkoroi has been demonstrated by a consent dated 13<sup>th</sup> May, 2020 between the parties.
7. However, the search certificate availed by the Applicant reveals that land parcel Timau/Timau Block 3/147 does not exist the same having been partitioned into land parcel Timau/Timau Block 3/435 and land parcel Timau/Timau Block 3/436.



8. For reasons only known to the Applicant, he failed to disclose the registered owners of land parcel Timau/Timau Block 3/435 and land parcel Timau/Timau Block 3/436.
7. From the foregoing, the application dated 29<sup>th</sup> January, 2023 is partially allowed in the following terms:
  1. The names of Lucy Mukiri and Gaichugi Munene (minor) are hereby substituted with the names Lucy Mukiri Nkoroi and Nancy Gaicugi Kagwiria respectively.
  2. Amended Certificate of Confirmation of Grant dated 13<sup>th</sup> June, 2022 shall be further Amended accordingly
  3. Mention on 03<sup>rd</sup> October, 2024 to confirm transmission

**DELIVERED AT MERU THIS 16<sup>TH</sup> DAY OF MAY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Ms. Mugo for Gichunge Muthuri & Co. Advocates

