



REPUBLIC OF KENYA



In re Estate of Mirigo M’Ituoruchiu alias Mirigo Twaruchiu (Deceased) (Succession Cause 835 of 2015) [2024] KEHC 7334 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 835 OF 2015
TW CHERERE, J
JUNE 13, 2024**

**IN THE MATTER OF THE ESTATE OF MIRIGO M’ITUORUCHIU
ALIAS MIRIGO TWARUCHIU (DECEASED)
AND
IN AN APPLICATION FOR RECTIFICATION OF THE GRANT**

**IN THE MATTER OF
JOSPHAT MWITI MIRIGO PETITIONER**

RULING

1. The applicant herein moved this court vide an application dated 22nd December, 2023 wherein the applicant seeks the following orders among others:
 1. That the certificate of confirmation of grant issued on 28th May, 2019 be rectified to the extent that LR. Ontulili/Ontulili Block 1 (Katheri) be amended to read LR. Ontulili/Ontulili Block 1 (Katheri)/274.
 - 2 That the name of Damaris Muthini be rectified to read Damaris Muthiri
3. The application is supported by an affidavit sworn by the applicant and is premised on the grounds that LR. Ontulili/Ontulili Block 1 (Katheri)/274 and the name of Damaris Muthiri were misspelt.
2. 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.

3. *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.”

4. After considering the summons dated 22nd December, 2023, I find that it is merited and it is hereby allowed in the following terms:

1. The certificate of confirmation of grant issued on 28th May, 2019 shall be rectified as follows:
 - i. LR. Ontulili/Ontulili Block 1 (Katheri) be amended to read LR. Ontulili/Ontulili Block 1 (Katheri)/274.
 - ii. That the name of Damaris Muthini be amended to read Damaris Muthiri
2. Certificate of Confirmation of Grant issued on 28th May, 2019 be rectified accordingly
3. Mention on 03rd October, 2024 to confirm transmission

DELIVERED AT MERU THIS 13TH DAY OF JUNE 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Ms. Mugo for Kiogora Arithi & Associates Advocates

