



**In re Estate of Thomas Makokha Wakhuleche (Deceased) (Succession Cause 232 of 1994) [2024] KEHC 12365 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 232 OF 1994  
S MBUNGI, J  
OCTOBER 16, 2024**

**IN THE MATTER OF THE ESTATE OF THOMAS MAKOKHA WAKHULECHE (DECEASED)**

**BETWEEN**

**JOSEPHINE MAKOKHA ..... 1<sup>ST</sup> ADMINISTRATRIX**

**MARYAM MUSEBE ..... 2<sup>ND</sup> ADMINISTRATRIX**

**AND**

**FRANCIS OPIYO ..... 1<sup>ST</sup> RESPONDENT**

**PATRICK NATERIE OYIERA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant herein filed summons dated 18.05.2024 seeking the following orders: -
  - a. That the rectified certificate of confirmation of grant issued to Josephine Makokha and Maryam Musebe further rectified on 26.01.2024 be further rectified in the following respect as provided for by Rule 43 (1) of the Probate and Administration rules:
    - i. That Francis Opiyo and Patrick Muyonga get 12 acres each from land parcel no.North Wanga/Indangalasia/116.
    - ii. That Idah Odhiambo Ndaliro to be allocated 2 acres, Makureti Were Oyiero, allocated 3 acres and Mariam Musebe Oyiera to be allocated 3 acres each from land parcel no.North Wanga/Indangalasia/1241.
    - iii. That Josephine Makokha Wattwa to be allocated 3 acres and Idah Odhiambo Ndaliro to get 1 acre out of land parcel no.North Wanga/Indangalasia/1263.
    - iv. That the Deputy Registrar be authorized to sign all the instruments of sub-division and transfer of North Wanga Indangalasia/1241 and 1263 to Idah Odhiambo Ndaliro,



Makureti Were Oyiero, Mariam Musebeoyiera and Josephine Makokha Watitwa where they are to get 3 acres each and title deed issued in their respective names.

- b. That the costs of this application be provided for.
2. The application for rectification is premised on the grounds on the face of it stating that as per the ruling of this court on 26.01.2023, the applicant together with her sisters are to get 2 acres each from North Wanga/Indangalasia/1241 and 1263 but does not reflect the position as follows: -
    - i. The ruling shows that Maryam Makokha is to inherit 2 acres out of North Wanga/Indangalasia/116 and Maryam Musebe Oyiera is to get 2 acres from North Wanga/Indangalasia/1241.
    - ii. The name Maryam Makokha does not appear on the National Identity card hence the ruling can be interpreted to mean that she is getting 4 acres.
    - iii. Marcela Were was not a beneficiary but Makureti Were Oyira.
  3. Vide a supporting affidavit sworn on 28.05.2024 by Josephine Makokha deponed that she was the co-administratrix of the estate of the late Thomas Makokha Wakhuleche.
  4. The applicant stated that vide a ruling delivered on 23.02.2012 by Justice Chitembwe, the court directed the 4 beneficiaries to take respective portions from the land parcel No. North Wanga/Indangalasia/1241, 1242 and 1243. She further stated that the land parcel No. North Wanga/Indangalasia/1242 was exempted from the parcels the beneficiaries were to inherit as the respondent had already sold to one Abraham Okumu Barasa.
  5. The applicant averred that despite apportioning North Wanga/Indangalasia/1243 to the daughters, the respondent went ahead and sold it creating subdivisions no. 1263 and 1264(sold), reducing the available land for sharing to 4 acres.
  6. The applicants submitted that as per the ruling of Justice Chitembwe, which still stands as no appeal has been preferred against it, a review of the ruling issued on 26.01.2024 is necessary since the daughters shall be left to inherit 3 acres each, instead of 4 acres due to the actions of the respondents. The applicant attached the preferred share of distribution to be considered in the rectification of the grant.

#### **Analysis and determination.**

7. The further rectified grant sought to be rectified by this application and issued by this court on 26.01.2024 distributed the property as follows: -

Name Description of property Share of heirs.



Francis Opiyo	N. Wanga/indangalasia/116	12 Acres
Patrick Muyonga	N. Wanga/indangalasia/116	12 Acres
Josephine Makokha Watitwa	N. Wanga/indangalasia/116	2 Acres
Josephine Makokha Watitwa	N. Wanga/Indangalasia/1263	2 Acres
Maryam Makokha	N. Wanga/Indangalasia/116	2 Acres
Idah Odhiambo Ndaliro	N. Wanga/Indangalasia/116	2 Acres
Idah Odhiambo Ndaliro	N. Wanga/Indangalasia/1241	2 Acres
Makureti Were Oyiera	N. Wanga/Indangalasia/1241	2 Acres
Mariam Musebe Oyiera	N. Wanga/Indangalasia/1241	2 Acres
Marcela Were	N. Wanga/IndAngalasia/116	2 Acres

8. Looking at the application, the applicant seeks to re-distribute the estate. Rectification of a grant is only limited to corrections of figures, typing errors or descriptions. And not to redistribute the deceased's estate.
9. 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 and Administration Rules*. Section 74 provides as follows:
- “74. Errors may be rectified by court:
- 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.”
10. Rule 43(1) provides as follows:
- “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 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.”
11. From the language of section 74 of the *Law of Succession Act* and Rule 43(1) of the *Probate and Administration Rules*, the scope of rectification of grants of representation is limited to 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. I may add that such other minor errors in that genre could also be rectified. Other major or substantial issues should be addressed through application for review of judgment or appeal. See



*In the matter of the estate of Geoffrey Kinuthia Nyamwinda (deceased)* [2013] eKLR where the court stated;

“...The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules*..... 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.....”

12. *In the matter of the estate of Hasalon Mwangi Kabero* [2013] eKLR the court stated:

“when dealing with an application for rectification of grant to add a full name of person who was omitted.”

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 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.

13. Therefore, this application seeks for a major amendment to the confirmed grant where some of the beneficiaries are to get more share than others. There is need for consent from other beneficiaries. So the only way out for the applicant is to file for an application for amendment for the confirmed grant or an application for a review of the confirmed grant.

14. Therefore, this application, for the above reasons is dismissed. No orders as to costs for the respondents never filed any response.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 16<sup>TH</sup> DAY OF OCTOBER, 2024.**

**S.N MBUNGI**

**JUDGE**

In the presence of:-

Ms. Nafuye for the applicants present in person

Respondents - absent

Court Assistant – Elizabeth Angong’a

