



REPUBLIC OF KENYA



In re Estate of Mang'oli Mukolongolo (Deceased) (Succession Cause 48 of 2005) [2024] KEHC 11877 (KLR) (4 October 2024) (Judgment)

Neutral citation: [2024] KEHC 11877 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 48 OF 2005**

DK KEMEL, J

OCTOBER 4, 2024

N THE MATTER OF THE ESTATE OF MANG'OLI MUKOLONGOLO (DECEASED)

BETWEEN

MARTIN WAFULA MANG'OLI APPLICANT

AND

ALBERT SIKUKU MANG'OLI RESPONDENT

JUDGMENT

1. The 1st Petitioner/Applicant herein filed summons for rectification of grant dated 22nd July 2022 and filed on 23rd September 2022. He sought orders that:
 - a. This honourable court be pleased to amend and/or rectify the grant of letters of administration intestate confirmed on 20th March 2017.
 - b. Other beneficiaries be added in place of others.
 - c. The Deputy Registrar to sign all transfer documents on behalf of the 2nd Petitioner.
 - d. Costs be in the cause
2. The application was premised on grounds on the face of it and the supporting affidavit sworn by the Applicant on 22nd July 2022 wherein he averred that the grant of letters of administration were confirmed on 20th March 2017 and that some beneficiaries were excluded. According to him, other beneficiaries are now deceased and ought to be replaced by their respective dependents as agreed by the beneficiaries.
3. He averred that the excluded beneficiaries are namely: Alali Nafula Wanyama, Catherine Namyama Nyongesa, Wycliffe Juma Nyongesa, Vitelis Wanjala Nyongesa, Luyekhe R.C Primary School and



Geoffrey Wanjala Sifuna. Also, he averred that one of the beneficiaries that died, Josephat Wanyama Mang'oli ought to be replaced by his wife, Alali Nafula Wanyama.

4. In response, the 2nd Petitioner/Respondent swore a replying affidavit on 8th May 2023, wherein he averred that the application dated 22nd July 2022 is misconceived and an abuse of the Court process as applications for rectification of grant can only be dealt with to correct errors that do not go to the substance as clearly stipulated under law. Further, he averred that the introduction of strangers into the estate of the deceased as beneficiaries means that he is re-distributing the same contrary to the original and agreed mode of distribution.
5. The Applicant swore a further affidavit on 9th March 2023, wherein he averred that his filed application dated 22nd July 2022 was filed together with a proposed mode of distribution and asserted that there is dire need to carry out a new survey exercise on the estate upon consultation and agreement by all beneficiaries.
6. According to him, the County Surveyors report established that the parcels of lands as listed in the proposed mode of distribution were altered with some increasing in size while others being reduced due to new access roads thus necessitating him to file an amended proposed mode of distribution.
7. The summons for rectification of grant were canvassed by way of *viva voce* evidence.
8. PET-PW1 was Martin Wafula Mang'oli, who testified that he is the Respondent and 1st Petitioner herein. At his request, this Court adopted the contents of his supporting affidavit to the application dated 22nd July 2022, his further affidavit sworn on 22nd March 2023 and his annexures thereto as his evidence in chief. According to him, the deceased was survived by two wives and seven children; that in the 1st house, Josephat Wanyama Mang'oli, now deceased, ought to be replaced by his wife, Alali Nafula Wanyama.

On cross-examination, he told the Court that the family after a vast meeting agreed that Josephat Wanyama Mang'oli, now deceased, ought to be replaced by his widow, Alali Nafula Wanyama. He told the Court that minutes were recorded but that the same was not availed in Court. He concurred that all the children of the deceased were duly catered for and that there was no need for a rectification of grant and that the contents of his affidavit under paragraph 4 are not correct. He acknowledged that he ought to have provided the requisite minutes allowing the widow of Josephat Wanyama Mang'oli to represent him in the estate of the deceased herein. On the issue of Luyekhe Primary School, he averred that the school purchased land from Leonard but he did not have any sale agreement to prove the purchase and that the purchasers did not attend Court during the confirmation of grant process. He insisted that everyone should remain in their portions as given and that he does not want the surveyor to rectify anything.

On re-examination, he told the Court that the late Josephat Wanyama Mang'oli had only one wife and his widow is entitled to his share and that he was not present when the County Surveyor visited the land and thus he is not aware as to why the shares were reduced.

9. At the close of the Petitioner's case, OB-PW1, Albert Sikuku Mang'oli, testified that he is the Objector/Applicant herein and a co-Petitioner in the estate of the deceased. At his request, this Court adopted the contents of his replying affidavit sworn on 8th May 2023 as his evidence in chief. According to him, the late Josephat Wanyama Mang'oli, had two wives namely: Atesa Nalonja Wanyama and Alali Wanyama. Atesa bore two sons and that she does not reside in the area but her sons do. He told the Court that no meeting was held to discuss who was to represent the interests of the late Josephat Wanyama Mang'oli and that no meeting was held to endorse Alali. He told the Court that he was present when the surveyor visited the land in 2023 and he saw the measurements. He insisted that the surveyor ought to re-visit



their land and rectify the acreages and that he knows one of the purchasers. He confirmed that none of the purchasers were present during the confirmation of grant process and that he did sell land to one Nicholas that he intends to transfer to him.

On cross-examination, he told the Court that he does not reside on the land and that he was present when the surveyor visited the land and that he concurred with the report. He insisted that the late Josephat Wanyama Mang'oli had two wives.

On cross-examination by the Court, he testified that the boundaries as set by the clan elders are still in place.

On re-examination, he told the Court that nobody has denied the purchasers their shares and that the surveyor followed the sizes as per the confirmed grant and fixed the boundaries which were removed by the 1st Respondent and others.

10. At the close of the oral hearings, parties were directed to file and exchange written submissions. Only the submissions by the Respondent are on record. The said submissions are mere recitations of the evidence on record with no citation of either statutory provisions or case law.
11. I have considered the rival affidavits and the oral evidence as well as the submissions presented. I find the only issue arising for determination namely whether the confirmed grant of letters of administration dated 20th March 2017 should be rectified.
12. Section 74 of the [Law of Succession Act](#) provides as follows:

“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court.”
13. Rule 43 (1) of the Probate and Administration Rules provides that:

“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 the 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.”
14. In the matter of the estate of [Geoffrey Kinuthia Nyamwinga \(deceased\)](#) [2013] eKLR the Court expressed itself as follows with regard to the issue of rectification of grants;

“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...”
15. From the wording of these provisions which deal with rectification of grant, it is clear that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased’s death and place of death of the deceased.
16. In general terms, rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors is what rectification seeks to address.



17. In the matter of the *Estate of Geoffrey Kinuthia Nyamwinda (deceased)* [2013] eKLR 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 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...”
18. In this case, the Applicant seeks to rectify the replacement of deceased beneficiaries with their dependants; inclusion of excluded beneficiaries.
19. Rectification of grant applies to correct errors which can be done without affecting the substance of the grant. These are errors in names, descriptions or on setting out the time and place of the deceased’s death or the purpose of a limited grant. The question that is therefore pending for this Court to determine is whether inclusion of excluded names and replacement of the names of the deceased’s beneficiaries with their dependants on the subject grant will affect the substance of the grant.
20. It is clear that the names do not refer to one and the same person but rather they are after rewriting the whole grant as issued by the Court. In my view, orders as sought by the Applicant do not meet the threshold for rectification as the same seeks the replacement of deceased’s beneficiaries names with dependants and inclusion of excluded names is not envisaged under Section 74 of the *Act* and Rule 43 of the *Probate and Administration Rules*. I find the rectifications sought do go to the substance of the confirmed grant which is not permissible.
21. In view of the foregoing observations, it is my finding that the summons for rectification of grant dated July 22, 2022, lacks merit. The same is dismissed with no order as to costs.

DATED AND DELIVERED AT BUNGOMA THIS 4TH DAY OF OCTOBER 2024.

D. KEMEI

JUDGE

In the presence of :

Angima for 1st Petitioner

No appearance Simiyu for 2nd Petitioner

Kizito Court Assistant

