



**In re Estate of Francis Mwangi (Deceased) (Succession Cause
73 of 2000) [2023] KEHC 1935 (KLR) (17 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 73 OF 2000
SM MOHOCHI, J
MARCH 17, 2023
IN THE MATTER OF THE ESTATE OF FRANCIS MWANGI
(DECEASED)
IN THE MATTER OF RECTIFICATION OF GRANT**

**IN THE MATTER OF
ISAAC NDUNGU MWANGI APPLICANT**

RULING

1. Before me is a chamber summons dated June 7, 2022, filed on June 7, 2022 expressed to be brought under sections 71(d), 74 and 75(e) of the *Law of Succession Act*, the applicant is Isaac Ndungu Mwangi an administrator with a grant of representation issued on the May 25, 2000 and confirmed on March 13, 2002.
2. This grant has successfully been rectified twice on the July 27, 2017, October 3, 2019 and the third attempt at rectification was disallowed by the court on the May 9, 2022.
3. The instant application regurgitates the failed application rectification dated April 26, 2021 with a slight variation of the grounds by the applicant as follows;
 - a. That the grant has become useless and inoperative through subsequent circumstances.
 - b. That the grant cannot be effected at the land's office for ambiguity.

"Dismissed application rectification dated April 26, 2021-grounds"
 - c. The amended grant dated October 3, 2019 cannot be effected as issued without the names of beneficiaries and their respective shares; and
 - d. The amendment seeks to enumerate the said names and acreage each is entitled to.



4. The application is supported by an affidavit sworn by Isaac Ndungu Mwangi dated June 7, 2022 and a further undated supplementary affidavit filed on August 14, 2022. The main aversion by the applicant is that the grant as confirmed does not indicate the names of beneficiaries and the share for each, that the family has sat down and agreed on having all names and shares included therein, that no family member shall hold any share in trust of a beneficiary that has acquired the age of majority and that there are innocent purchasers who purchased land from the widows of the deceased.
5. A scrutiny of the proposed rectification reveals that the applicant seeks to introduce twenty-six (6) new individuals and self-help groups. Slight unexplained variation has occurred relating to the specific beneficiary on Nakuru/ Rare/ Kiriri/ 241 where the ½ share to John Githaiya Mwangi is now proposed to be transmitted to Francis Mwangi Nyambura a stranger in these proceedings.
6. The said application was without any consent by the beneficiaries and when Ms Mwangi appeared before court she indicated she is relying on the consent filed in the dismissed application for confirmation dated April 26, 2021, this is un-procedural and untenable under the circumstances and the need for demonstrating consensus is a legal predicate, absence of which, the beneficiaries ought to appear in person to state their concurrence.
7. While there appears no contest in the instant application it remains paramount that the proceedings herein are on behalf of the deceased who passed on intestate on February 12, 1999 and that the court must always remain alive to its primary responsibility and ensure that at every stage all beneficiaries are fully involved.
8. The court is equally alive to the obligations that accrue upon an administrator upon issuance of grant which in a nutshell includes gathering and safeguarding all the assets of the deceased, determining and settling liabilities due to the estate and making provision to dependants not adequately proved for on intestacy.
9. It thus follows that the administrator has obligation to undertake his/her work with diligence and at all times to provide the court with up to-date status of the estate of the deceased and ensure at all times that no intermeddling occurs on the estate of the deceased.
10. While the applicant relied on sections 71(d), 74 and 75(e), it is important to note that sections 71 (d) and 75(e) do not exist and that the question to be answered is whether the rectification sought could be carried through under section 74 of the [Law of Succession Act](#)
11. 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.”
12. 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.”

13. 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.
14. 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 Nyamwinga (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.....”
15. See also *In the matter of the estate of Hasalon Mwangi Kahero* [2013] eKLR. Where 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.”
16. In this case the applicant seeks to introduce over twenty-six (26) new names who according to him purchased portions of Elburgon Block 2/8 Kirwara from “the widows of the deceased”. Such admission before court of an administrator is unfortunate and indicate extreme intermeddling contrary to section 55(2) of the Law of Succession, on the estate of the deceased. The court is not informed as to when the intermeddling occurred and what role the administrator undertook to forestall or stop such intermeddling.
17. Similarly, the application seeks substitute John Githaiya Mwangi with Francis Mwangi Nyambura as the ½ share beneficiary on Nakuru/ Rare/ Kiriri/ 241 the court has not been informed as to who the new beneficiary is and status of the previous beneficiary.
18. The court observes that the administrator has never offered any explanation to the court on how he has facilitated the transmission of the other non-contentious assets to the respective beneficiaries if at all any. The court finds that the application seeks to substantially alter the grant of probate and that any strangers who might have illegally acquired portions of any assets may obtain the subdivision and transfers from the beneficiaries who the assets have been transmitted to vide the confirmation of grant.
19. It bears repeating that the scope of rectification of grant under section 74 of the *Law of Succession Act* is quite limited and cannot handle such substantial issues which may require further evidence or visit to the locus in quo or interrogation by appellate court.



20. Perhaps, a proper application for review of judgment or appeal is the way out of this quagmire.
21. For the above reasons the court finds the application dated June 7, 2022 is without merit and accordingly dismiss the same.
22. The applicant and beneficiaries are at liberty to seek the directions of the court in completion of the probate and administration process.
23. These orders are made in the best interest of and justice for the parties concerned.

**DATED, SIGNED AND DELIVERED AT NAKURU THROUGH TEAMS APPLICATION THIS
17TH DAY OF MARCH, 2023**

Mohochi S.M

JUDGE

