



REPUBLIC OF KENYA



**In re Estate of Robert Murithi alias M'noti M'ituma alias Inoti Ituma (Deceased)  
(Succession Cause 337 of 2005) [2023] KEHC 1875 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1875 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 337 OF 2005  
EM MURIITHI, J  
MARCH 16, 2023**

**BETWEEN**

**ALICE CHAKU ROBERT ..... PETITIONER**

**AND**

**AGNES KARIMI MURITHI ..... 1<sup>ST</sup> APPLICANT**

**PATRICK KIOGORA MURITHI ..... 2<sup>ND</sup> APPLICANT**

**LAWRENCE MUTUGI ..... 3<sup>RD</sup> APPLICANT**

**RULING**

1. By Summons dated July 29, 2021, the petitioner seeks rectification and/or amendment of the grant issued on July 9, 2015.
2. The import of the amendment is to redistribute land parcel Nos Nkuene/l-mikumbune/164 and Abothuguchi/kijja/233 to the deceased children. It is averred that land parcel Nos Nkuene/l-mikumbune/164 and Abothuguchi/kijja/233 were misspelt as Abogeta/l-mikumbune/164 and KIIJA/233 respectively. It is further averred that the deceased was also known as Inoti Ituma.
3. There was no affidavit in reply or other response to the application. The applicants however, filed a separate application dated May 12, 2022 seeking the revocation of the Grant herein supported by the affidavit of the 1<sup>st</sup> applicant. By order of the court dated October 24, 2022, the two applications were heard together by way of submissions on the December 13, 2022 and ruling was reserved.
4. The petitioner filed her submissions on November 17, 2022 urging that the amendments sought are envisaged under section 74 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules*, and cites *Re Estate of David Karimi Kanegeni-Deceased (2019) eKLR*. She urges that the mis-description of the parcels of land makes the implementation of the grant impossible hence the need for rectification.



5. The applicants urge that the sought amendment of the grant will entirely disorganize the earlier distribution, which will cause disunity in the family since most of those who have been introduced in the belated proposals are persons drawn from the petitioner's own household. They are however not opposed to the amendment for proper description of the 2 properties. They urge that the petitioner is hell bent to frustrate the distribution of the estate since she and her household are in occupation of the larger part of the estate.

### **Analysis and Determination**

6. The issue for determination is whether the prayers sought in the two rival applications should be granted.

7. This court is alive to the fact that rectification of a grant under Section 74 of the [Law of Succession Act](#) is in respect of errors and mis-descriptions only. That Section provides as follows: -

' 74. 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; and the grant of representation whether before or after confirmation, may be altered and amended accordingly.'

8. Rule 43 (1) of the Probate and Administration Rules, by which the substantive provision of Section 74 of the [Law of Succession Act](#) is enforced, instructively provides: -

' 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 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.'

9. It is clearly a procedure for correction of minor errors in the in the grant, and I must respectfully agree with the position observed [in Re Estate of Njagi Rurima \(Deceased\) \[2020\] eKLR](#), where the court (F Muchemi J) said:

' There is no provision in the Act that permits rectification or amendment by adding a new beneficiary in the grant or to redistribute the estate.'

10. Similarly, with the Court [in re estate of Charles Kibe Karanja \(Deceased\) \[2015\] eKLR](#) (W Musyoka J) interpreting section 74 of the Act elaborated as follows:

' From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the court through Section 74 of the [Law of Succession Act](#), for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the



time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.'

11. A look at the 2 official searches on record for Nkuene/l-mikumbune/164 and Abothuguchi/kijja/233 shows that indeed those 2 properties were misspelt as Abogeta/l-mikumbune/164 and KIIJA/233 respectively in the certificate of confirmation of grant dated 09/07/2015.
12. It is equally factual that the deceased herein was also known as Inoti Ituma as seen in the official search for Nkuene/l-Mikumbune/164.
13. The petitioner also seeks to have Nkuene/l-mikumbune/164 And Abothuguchi/kijja/233 redistributed equally to all the children of the deceased. Although the deceased herein was survived by 18 beneficiaries, only the petitioner, Agnes Karimi Murithi and Patrick Kiogora Murithi got a share of the 2 properties. Plot Nkubu Market No 81 B which also belonged to the deceased was distributed jointly to the petitioner, Agnes Karimi Murithi and Patrick Kiogora Murithi while Nkuene/taita/589 And Nkuene/taita jointly went to Ruth Mwari M'Mwarania, James Mwirigi Mugambi and Tony Mureti Kimathi. No explanation has been proffered why the sought redistribution is solely focused on Nkuene/l-mikumbune/164 And Abothuguchi/kijja/233 and not all the properties of the deceased.
14. The court finds that by allowing the sought redistribution of the 2 properties to the newly introduced beneficiaries and in a totally distinct manner, the distribution of the estate of the deceased as ordered by the court will be effectively distorted and altered.
15. This court, therefore, takes the view in agreement with the courts in Re Estate of Njagi Rurima (Deceased) [2020] eKLR and re estate of Charles Kibe Karanja (Deceased), supra, that the sought redistribution of the 2 properties cannot be effected through rectification of the grant as sought by the Petitioner in the Summons for Rectification of Grant dated July 29, 2021. It must be a substantive application that permits the review or reconsideration by the court of the orders of distribution made in the confirmation of the grant.
16. Further, the court does not accept that there is a basis to revoke the grant made to the Petitioner herein as she has not, in terms of section 76 (d) (ii) of the *Law of Succession Act*, 'failed, after due notice and without reasonable cause to proceed diligently with the administration of the estate.' All that is necessary now is the distribution of the Estate in accordance with the Confirmed Grant.
17. It is by this ruling that due notice is given to the Petitioner that, pursuant to Section 83 of the *Law of Succession Act*, the Court shall require the completion of the administration and distribution of the estate of the Estate in accordance with the rectified Confirmed Grant within 6 months.
18. If the Administratrix petitioner herein is not willing to set in the process of transmission, the applicant may secure the execution of the transfer documents by the Deputy Registrar/ Executive Officer of this Court.

## ORDERS

19. Accordingly, for the reasons set out above, the court makes the following orders:



1. The Confirmed Grant dated July 9, 2013 is rectified to reflect the description of Land parcels formerly shown as Nos Abogeta/l-mikumbune/164 And Kiija/233 correctly as Nkuene/l-mikumbune/164 And Abothuguchi/kiija/233.
  2. The name of the deceased herein is rectified to include Inoti Ituma as prayed in application dated July 29, 2021.
  3. The application for amendment for redistribution of land parcel Nos Nkuene/l-mikumbune/164 And Abothuguchi/kiija/233 to children of the deceased sought by the application for rectification dated July 29, 2021 is declined.
  4. The application for revocation of the Grant dated May 12, 2022 at this stage is declined and it may be repeated if the petitioner fails after this notice to proceed with the administration and complete distribution of the Estate within 6 months.
20. There shall be no order as to costs.
21. Mention for compliance and confirmation of final distribution of the Estate on September 18, 2023.
- Order accordingly.

**DATED AND DELIVERED ON THIS 16<sup>TH</sup> DAY OF MARCH, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

M/S L. Kimathi Kiara & Co. Advocates for the Petitioner.

M/S Basilio Gitonga, Muriithi & Associates for the Applicants.

