



**In re Estate of Solomon Arachi Kirimania (Deceased) (Succession Cause
364 of 2006) [2023] KEHC 3357 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 364 OF 2006
TW CHERERE, J
APRIL 20, 2023**

IN THE MATTER OF THE ESTATE OF SOLOMON ARACHI KIRIMANIA (DECEASED)

BETWEEN

ZIPPORAH GACEKE M'ARACHI APPLICANT

AND

JENNIFFER WANZA KATIVANGA RESPONDENT

RULING

1. By a ruling dated October 30, 2018, Gikonyo J. directed that the Certificate of Confirmation dated October 23, 2008 be amended by thereby reducing the share for the Applicant from 12 acres to 8 ½ acres and increasing the share for the Respondent from 1 acre to 2 ½ acres.
2. Consequently, a Rectified Certificate of Confirmation of Grant dated December 20, 2018 was issued distributing the estate as ordered by the acres in acres and not in hectares.
3. I have considered the summons dated 0October 2, 2019 and filed on October 4, 2019 in which the Applicant seeks rectification of the grant dated December 20, 2018 to reflect her share as 4.02 Ha and not 8 ½ acres. The application is supported by an affidavit sworn by the Applicant on 0October 2, 2019 in which she avers that she commissioned a surveyor whose report shows that she occupies more than 8 ½ acres distributed to her. These averments are reiterated in Applicant's further affidavit sworn on November 16, 2022.
4. By her Replying affidavits worn on June 12, 2021, Respondent opposes the summons and avers that the court having reduced Applicant's share to 8.5 acres, her share ought to have been 3 ½ acres and not 2 ½ acres. Respondent therefore prays that the grant be rectified distributing 3 ½ acres to her.



Analysis and determination

5. I have considered the application in the light of the affidavits on record and annexures thereto and the question to be answered is whether the rectification sought is merited.
6. 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.”

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.”

7. 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.
8. 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.....

9. See also *In the matter of the estate of Hasalon Mwangi Kabero* [2013] eKLR here 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.



10. In this case Applicant and Respondent seek to alter the acreage of the estate distributed to them. Such a rectification does not in my considered view fall within the ambit of section 74 of the [Law of Succession Act](#) and Rule 43(1) of the Probate and Administration Rules and is therefore unmerited.
11. Further to the foregoing, I notice that it is over 4years down the line since the Rectified Certificate of Confirmation of Grant dated 20th December, 2018 was issued yet the estate remains undistributed.
12. Section 83 of the [Law of Succession Act](#) Cap 63 Laws of Kenya which provides that: (g)within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
13. The Applicant who is the administrator of the estate is herein warned that this court will not hesitate to exercise its powers under Section 76 of the [Law of Succession](#) which includes revocation of the grant if she does not proceed diligently with the administration of the estate.
14. It is therefore hereby ordered as follows:
 1. The summons dated 0October 2, 2019 and filed on October 4, 2019 seeks rectification of the grant dated December 20, 2018 is without merit and it is disallowed
 2. The Applicant/Administrator is directed to complete the administration of the estate within 60 days from today's date
 3. Mention on July 20, 2023 to confirm distribution
 4. Costs shall be borne by the Applicant

DATED AT MERU THIS 20TH DAY OF APRIL 2023

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Ringera for Gatari Ringera & Co. Advocates

For Respondent - Ms. Bundi for Bundi Grace & Co. Advocates

