



**In re Estate of Alphonse Musine Amare (Deceased) (Succession Cause
40 of 2014) [2023] KEHC 17880 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17880 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 40 OF 2014
SC CHIRCHIR, J
MAY 17, 2023**

BETWEEN

FLORENCE MAKUTSA MUSINE PETITIONER

AND

BERNADETTE MMBWANI MUTONGOI PROTESTOR

RULING

1. Before this court is the objector's application dated January 18, 2023. Although the parties had informed the court that the application that was due was the one dated December 20, 2022, the record shows that on January 18, 2023, the application dated December 20, 2022 was withdrawn, and replaced by the one dated January 18, 2023. I will therefore proceed to determine the application dated January 18, 2023.
2. The application has been brought by the objector. It seeks for rectification of grant to provide specific acreage for the administrator, Florence Makutsa Musine, in respect to the only asset of the estate namely title Isukha/shirere/2659. The applicant states that the said parcel is divided into 3 portions; that her portion is in the middle, while the petitioner two portions are on either side of her portion.
3. She wants the court to specify the acreage that will go to the petitioner as the court did not specify the acreage at the time of delivering judgment.

Determination

Background

4. A little background to the present application is necessary:

Through the ruling delivered on May 22, 2020 Justice Njagi apportioned the suit property between the two contestants herein. In the said ruling the court gave 0.35 hectares to the applicant herein who



was then suing as an objector and the “the rest of the land” to the petitioner, who is the respondent in this application.

5. I have read the application and the supporting affidavit. I have found it difficult understanding the rationale and the aim of the applicant’s prayer. Justice Njagi’s ruling of May 22, 2020 was clear. The objector was to get 0.35 Ha while “the rest of the land” was to go to the petitioner. (Emphasis added)
6. Thus, whatever acreage remained after the objector’s portion had been hived off, was to go to the petitioner. The subject land is one parcel and therefore I wonder what the split of the petitioner’s portion into pieces of 0.34 hectares and 0.53 acres will serve. The applicant herein had told the court that she was already in occupation of 0.35 acres and said portion had already been fenced off. It is assumed therefore that the said particular portion was and is already identifiable on the ground. As per justice Njagi’s judgment whatever else remained belonged to the petitioner.
7. If the land is said to exist in 3 portions, then unless individual titles have been issued or at least mutation forms drawn, it remains one parcel and the prayer sought, even if granted, is of no use. Attaching a drawing showing the acreage of each portion without providing parcel numbers for the individual subdivisions is equally of no use to the parties herein.

What is rectification of grant?

8. Rectification of grant is governed by section 74 of the [Law of succession Act](#) and rule 43(1) of the [Probate and Administration Rules](#).
9. Section 74 provides as follows: “..... errors in the names and description, or setting of the time and place of the deceased 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 or 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 description of any person or thing or as to the time or place of death of the deceased or, in the case of limited grant , the purpose for which the grant was made, he shall apply in summons in form 110 for such rectification through the Registry and in the cause in which the grant was made.”
11. In [Re matter of Hasalon Mwangi Kabero](#)(2013)e KLR it was held: “.... An error is essentially a mistake. For the purpose of section 74 and rule 43, it must relate to a name or description or time and place of deceased’s death or the purpose of a limited grant. Is the omission of a name or description of a name or the description of a thing an error? It would be an error if say a word in the full name of a person or a full description of a thing or property is omitted. It would be stretching the word “error” too far to say that would amount to an error or mistake envisaged in section 74 and rule 43”.
12. There was no error in the grant arising from the judgment of Justice Njagi that would lend itself to rectification. What the applicant is clearly seeking, is a review of justice Njagi’s Judgment on the basis of some additional information which apparently was not placed before court during the hearing of the objection proceedings or some additional information that has since come up.
13. Therefore, to approach the court in the name of rectification is misplaced as the prayer being made is not in the nature of rectification within the context of section 74 of the Act. However even if she had sought for a review the applicant has failed to submit sufficient material to warrant a review.
14. The application is completely unwarranted. It is hereby dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 17TH DAY OF MAY 2023



S. CHIRCHIR

JUDGE

In the presence of;-

Erick- Court Assistant

No appearance by the parties

