



**In re Estate of Sitati Wafule (Deceased) (Succession Cause
287 of 2003) [2023] KEHC 19024 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19024 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 287 OF 2003
SC CHIRCHIR, J
JUNE 15, 2023**

**IN THE MATTER OF
JERTINA KHAVAI SITATI PETITIONER**

RULING

1. Through the summons dated October 8, 2022, the Administrator Jertina Khavai Sitati seeks for the amendments of the certificate of confirmation of grant.
2. The summons is supported by the grounds appearing on the face of the Application and the attached affidavit of the applicant. The amendment sought is in respect of the Deceased names, names of two of the beneficiaries and the description of one of the Estate properties.
3. It is the applicant's case that whereas one of the deceased's property bears the name Sitati Wafula , the Death certificate bears the name Jotham Sitati Wafula. She therefore prays that the name in the grant be amended to read Sitati Wafula alias Jotham Sitati Wafula.
4. She further submits that there were clerical errors on the names of two beneficiaries. She prays that the name of Moses Kamanda Ng'ang'a should be amended to read Moses Kwalanda Ng'ang'a and Julius Warunga Chilosi should read Julius Werunga Chilosi .
5. The petitioner further seeks to have title No.N/Kabras/Luandeti/1396 be corrected to read N/ Kabras/ Luandeti/396.
6. It is submitted that all the errors are clerical in nature.

Determination

7. I have considered the summons, the supporting affidavit and the annexures. I have also perused the past proceedings in the file. A perusal of all the aforementioned documents show that what the applicant is seeking for is rectification of grant within the context of section 74 of the *law of succession Act* and Rule 43(1) of the *Probate and Administration Rules*.



8. The section provides as follows: “ Errors in names and descriptions, or in setting fourth 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) of the *Probate and Administration Rules* provides:

- “ a) a) where the holder of the grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names of descriptions of any person or thing or as to the time and 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 fomr 110 for such rectification

9. The proposed rectification is on the names and description of one of the deceased’s properties and therefore qualify for rectification pursuant to the above stated provisions.
10. On the name of the deceased, the death certificate and the chief’s letter bear the name Jotham Sitati Wafula while the petition for letters of administration and one of the certificate of official search of the Estate properties , bear the name Sitati Wafula.
11. I have also noted that in affidavits filed by 6 of the beneficiaries in support of the distribution, they refer to the deceased as their father and give his name as Jotham Wafula Sitati .
12. Am satisfied that the name Sitati Wafula and Jotham Sitati Wafula refer to one and the same person, the deceased herein. It follows therefore that in her Application for Grant of letters of Administration the applicant ought to have indicated the names of the deceased as “Sitati Wafula alias Jotham Sitati Wafula” .This omission can be made good through rectification.
13. On the other two beneficiaries I have looked at their national identity cards and I am satisfied that it was a case of misspelling of names and the same qualifying too for rectification.
14. Finally on the description of one of the properties as N/Kabras/Luandeti/1396 instead of 396, I am satisfied that this was a clerical error. Again going back to the documents filed earlier on in the case, I have noted that the certificate of official search issued on 20/1/2003 and the chief’s letter dated 19/1/200, and indeed the petition itself, indicate the plot number as 396. Also another certificate of official search filed in cour on 6/12/2022 also describe the plot number as 396 and not 1396. It is clear to me that the error occurred at the point of issuance of the certificate of confirmation of Grant where the subject parcel number was indicated as 1396 instead of 396. This also qualifies for rectification within the context of the Act.

In conclusion, the applicant’s application is merited and the same is allowed in the following terms:

- a) The name of the deceased is hereby amended to read “Sitati Wafula alias Jotham Sitati Wafula.”
- b) The name Moses Kamanda Ng’ang’a is hereby amended to read Moses Kwalanda Ng’ang’a
- c) The name Julius Warunga Chilosi is hereby amended to read Julius Werunga Chilosi
- d) Title No.N/Kabras/Luandeti/1396 is hereby amended to read N/Kabras/Luandeti/396
- e) An amended certificate of confirmation of grant to issue forthwith.

DATED SIGNED AND DELIVERED AT KAKAMEGA THIS 15TH DAY OF JUNE 2022.

S. CHIRCHIR



JUDGE

In the presence of:

