



REPUBLIC OF KENYA



In re Estate of John Ngacha Ng'ang'a (Deceased) (Succession Cause E787 of 2021) [2023] KEHC 19462 (KLR) (Family) (5 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E787 OF 2021
EKO OGOLA, J
JUNE 5, 2023
IN THE MATTER OF THE ESTATE OF JOHN NGACHA
NG'ANG'A (DECEASED)**

RULING

1. Before the court is a Summons Application dated March 1, 2023 where the Applicant prays for the following orders:
 1. That the grant of letters of Administration made to the Petitioner on August 17, 2021 and confirmed on March 15, 2022 be rectified by including the following parcels of land:
 - i. LR No 4953/4223- IR 141554 measuring 1.056 ha or thereabout located at Thika
 - ii. LR No 4953/5326 measuring 0.4940 ha or thereabout located at Thika
 - iii. LR No 4953/5327 measuring 0.4940 ha or thereabout located at Thika
 - iv. LR No 4953/4950 measuring 0.500 ha or thereabout located at Thika
 2. That the costs of this application be in the cause
2. The application is anchored upon section 74 of the *Law of Succession Act* cap 160 and Rule 43(1) of the *Probate and Administration Rules*. The Application is supported by the Affidavit of Jane Margaret Wanjiku sworn on March 1, 2023
3. The Applicant is an Administrator of the estate of the deceased having been issued with the grant of letters of Administration on August 17, 2021. According to the Applicant, the above mentioned properties were omitted as she was applying for letters of Administration; that she intended to Register deed plans for the named properties but the Lands Ministry informed her that the properties did not form part of the estate of the deceased. The Applicant seeks rectification to have the said parcels of land included in the confirmed grant so that she can administer the estate of the deceased with ease.



4. Section 74 of the [Law of Succession Act](#) provides that: -

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.

Rule 43(1) of the [Probate and Administration Rules](#) provides that: -

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 the 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.

5. Rectification of a grant of Letters of Administration is therefore limited to matters set out under Section 74 of the [Law of Succession Act](#). Under this provision rectification of grant deals specifically with correction of error which the court may order without changing the substance of the grant. This includes errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is visualized under the Section is a mistake which may occur on the face of the grant like typing errors in names of persons or the things. A rectification seeking to include properties which were not in the schedule of the assets when filing the cause and not included in the grant may not fit in the matters provided under Section 74 of the [Act](#).

6. [In the matter of theplaceholder-RG6uB Estate of Hasalon Mwangi Kabero](#) [2013] eKLR

The court stated;

“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's 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.” (mine emphasis)

7. [In the matter of the estate of Geoffrey Kinuthia Nyamwinga \(deceased\)](#) [2013] eKLR

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.....

Where a proposed amendment of a grant cannot be dealt with under the provisions of section 74 of the [Law of Succession Act](#), the applicant ought to approach the court under order 44 of the [Civil Procedure Rules](#). A review under order 44 of the [Civil Procedure Rules](#) may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this provision – order 44 of the [Civil Procedure Rules](#) on account of some mistake or error apparent on the face of the record and on the



ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”

8. In *John Mundia Njoroge & 9 others v Cecilia Muthoni Njoroge & another* [2016] eKLR

The Court held;

“...the only provisions of the *Civil Procedure Rules* imported to the *Law of Succession Act* are Orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time.

Clearly, Order 45 relating to review is one of the *Civil Procedure Rules* imported into succession practice by rule 63 of the *Probate and Administration Rules*. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the *Civil Procedure Rules*.”

9. *In re estate of Charles Kibe Karanja (deceased)* [2015] eKLR

The court stated;

“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 affected without touching the orders made by the Court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant. The remedy of review of Court orders is not directly provided for in the *Law of Succession Act* and the *Probate and Administration Rules*, but it is imported into probate practice by Rule 63 of *Probate and Administration Rules*, which has adopted a number of procedures from the *Civil Procedure Rules*.....

Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the Court has confirmed the grant or a heir or survivor of the deceased who had previously been unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.....

New assets cannot be introduced and distributed by merely rectifying the certificate of confirmation of grant. That calls for going back to the distribution orders, so as to have them altered or revised. (mine emphasis)



10. There is harmony in the above decisions that rectification of grant deals with correction of errors and/or mistakes in names and description. A party seeking rectification to bring in assets not originally included in the grant cannot be said to be seeking rectification.
11. The Applicant in this case has stated that she omitted the properties from the onset, during the filing of the Petition for Grant of letters of Administration. Seeking to add four properties is a substantial amendment which cannot be handled by rectification under Section 74 of the *Law of Succession Act*. The Applicant would be required to produce evidence as to whether the four properties belonged to the deceased and give a proper account as to why the properties were omitted from the beginning. The Applicant could perhaps consider seeking a review.
12. In consideration of the above, the Application dated March 1, 2023 is not allowed. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE 2023.

E.K. OGOLA

JUDGE

Judgment delivered online the presence of:

Mr. Gitonga for the Applicant

Ms. Gisiele Court Assistant

