



**In re Estate of Jared Ombogo Adero (Deceased) (Succession Cause 504 of 2008) [2023] KEHC 20256 (KLR) (18 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE 504 OF 2008  
MS SHARIFF, J  
JULY 18, 2023**

**BETWEEN**

**ANDREA GOGO ADERO ..... PETITIONER**

**AND**

**JOHN OBARE ABIRA ..... OBJECTOR**

**RULING**

1. The objector filed an application dated January 16, 2023 seeking the following orders; -
  - a. Spent.
  - b. The honourable court be pleased to amend the grant of letters of administration issued to the petitioner by including the objector as a co-administrator.
  - c. The honourable court be pleased to cancel all tittle deeds emanating from the sub-division of land parcel Kisumu/Kogony/2001 being land parcels Kisumu/kogony/5811 amalgamated forming part of Kisumu/kogony/7628 and 5812 which form part of the estate of the deceased.
  - d. The honourable court be pleased to direct Kisumu land registrar to cancel entry numbers 2,3,4 & 5 in green card of Kisumu/kogony/2001 and revert back to entry number 1 as at 3/2/1992 in the name of Ombogo Adero, issue the official search certificate to the objector for filing a fresh distribution of the said property.
  - e. Costs of the application be provided for.



2. The applicant depones that the deceased was his uncle who was married but had no child. That the applicant had been taking care of the deceased until his demise and had been shown a portion to construct his house which he did.
3. He laments that the respondent took out letters of administration without informing him and upon obtaining the letters, proceeded to sub-divided land parcel Kisumu/Kogony/2001 into 2 portions namely Kisumu/Kogony/5811 and Kisumu/Kogony/5812. That upon sub-division, the Respondent sold off land parcel Kisumu/Kogony/5811 which was subsequently amalgamated with another parcel to form Kisumu/Kogony/7628.
4. He thus depones that he stands to suffer gross injustice unless the orders sought herein are granted.
5. Despite service, the respondent filed no response to the application. The court also ordered the applicant to file his submissions on the application to which he complied and filed his submissions dated April 27, 2023. The same have been considered.
6. Looking at the notice of motion application, the same is expressed to be preferred pursuant to sections 1,3,3A, 63(e) of the [Civil Procedure Act](#) and sections 74,75 and 76 of the [Law of Succession Act](#).
7. The prayers sought as stated above need not be reproduced here save to state that the main issue for determination at this stage is whether the applicant is entitled to the orders sought.
8. The 1<sup>st</sup> prayer sought is the amendment of grant made on March 19, 2010. Ordinarily rectification of grant is provided for under Section 74 of the [Law of Succession Act](#) which provides;

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.

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

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 or 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 Form 110 for such rectification through the registry and in the cause in which the grant was made.

10. By using the word amendment, I presume that the applicant meant the same thing as rectification whose governing legal provisions has been given above. The applicant seeks to have the grant rectified to include him as an administrator.
11. The matters that may be rectified under section 74 of the Act are limited to minor errors which may have occurred inadvertently. [In re Estate of Kabiga Mwathi \(Deceased\)](#) [2022] eKLR, it was held;

Thus, rectification of grant of letters of administration is limited to matters set out in section 74 of the [Law of Succession Act](#). These matters specifically refer to corrections of error which the court may order without changing the substance of the grant. These include 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 envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of persons or things.



12. Considering the nature of the amendment sought to be effected, I find that the same is a not a matter/ error falling under section 74 of the Act and proceed to decline the prayer.
13. On the other prayers sought, the same relate to cancellation of title deeds and entries made in the register which are substantive in nature and cannot be granted in this application before the matter is finally set down and heard on merit after proper evidence has been tendered.
14. After perusing this file, I note that the court on February 19, 2020 gave orders of prohibition restraining the respondent from dealing with land parcel Kisumu/Kogony/2001. This order follows an application dated February 18, 2020 for revocation of grant issued to the respondent. The orders therein have not been set aside, lifted and or vacated and therefore still protect the applicant's interests in the estate.
15. The record shows that the application has never been dealt with conclusively and in the circumstances, I find the instant application premature in light of the application dated February 18, 2020 which can conclusively deal with the issues raised in this application.
16. In the circumstances, I find the instant application without merit and proceed to dismiss it with no order as to costs.
17. The objector's application dated February 18, 2020 is hereby scheduled for taking of directions on July 31, 2023.

**DELIVERED, DATED AND SIGNED AT KISUMU THIS 18<sup>TH</sup> DAY OF JULY 2023.**

**MWANAISHA. S. SHARIFF**

**JUDGE**

