



REPUBLIC OF KENYA



In re Estate of Kebue Ole Lepatei Korongoro (Deceased) (Succession Cause 2 of 2019) [2023] KEHC 21593 (KLR) (11 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
SUCCESSION CAUSE 2 OF 2019
SN MUTUKU, J
JULY 11, 2023**

IN THE MATTER OF THE ESTATE OF KEBUE OLE LEPATEI KORONGORO (DECEASED)

RULING

1. The administrators of the Estate of Kebue Ole Lepatei Korongoro, deceased, have filed this Summons dated January 2, 2023, seeking to rectify the Grant of Letters of Administration issued on February 18, 2019 and the Certificate of Confirmation of Grant dated November 13, 2019 in the following manner:
 - a. By expunging the names Silas Kepue .
 - b. By substituting the name Paul Kepue with Paul Ntisho Ole Kepue .
 - c. By substituting the name Anna Wanjiku Kepue with Annah Wanjiku Kipue .
 - d. By substituting the name Kilusu Kepue with Kilusu Ole Kepue .
 - e. By substituting the name Anna Wanjiku Kepue with Annah Wanjiku Kipue in the Certificate of Confirmation.
 - f. By substituting the name Jacob Memusi Kepue with Memusi Kepue in the Certificate of Confirmation of Grant.
 - g. By substituting the name Innan Kepue with Chistine Inan Kepue in the Certificate of Confirmation of Grant.
 - h. By substituting the name Pesi Kepue with Pesi Lene Oltimbau in the Confirmation of Grant.
 - i. By adding Arroi Nrresho Limited in the 2nd column of the 7th row in the Certificate of Confirmation of Grant.
 - j. By substituting the name Nosim Group Limited with Osim Company Limited in the Certificate of Confirmation of Grant.



- k. That the distribution of parcel number Kajiado/Kaputei-Central/2319 proceed based on the rectified schedule of the Certificate of Confirmation of Grant and as further restated by the mutation registered at the Lands Registry.
 - l. That costs of this application be provided for.
2. The Summons were supported by an affidavit dated January 2, 2023 sworn by the administrators herein in which the reasons for the rectification were given. The main reason for the rectification is to align the names of the beneficiaries with the names in their national identity cards so as to correctly capture the names of the administrators and beneficiaries whose names were not correctly captured in the succession matter.
 3. It is explained, further, that the sale of 10 acres referred to in the 2nd column of the 7th schedule was completed with Arroi Narresho Limited as the purchaser therefore being a beneficiary and that they commissioned a survey of Kajiado/Kaputei-Central/2319 for purposes of distribution to the beneficiaries in accordance with schedule of distribution in the Certificate of Confirmation of Grant; that the same has been approved and registered at the Lands Registry and that this will enable the Lands registrar process and issue title documents thereby concluding the distribution.
 4. This court directed that the applicants file brief submissions on the matter. I have read the submissions dated 9th February, 2023 in which the reasons behind this application have been explained.
 5. It is submitted that the substitution of the names is necessary to correct the names to reflect the names as they appear in the national identity cards. It is explained that the name of one of the administrators, Lekuria Ole Kebue Lepatei, was incorrectly captured as Silas Kipue; that this administrator died on July 27, 2021 before completion of the administration of the estate and therefore section 81 of the [Law of Succession Act](#) applies. It was submitted that the orders sought, when granted, will enable the surviving administrators to complete the administration of the estate.
 6. They relied on [Estate of Elizabeth Wamaita Maina alias Wanjira \(Deceased\)](#) 2017 eKLR where the court held that:

“I am convinced that to facilitate and expedite execution of the grant, the name of the deceased administrator ought to be removed leaving the two surviving administrators as the only personal representatives. Accordingly, prayer two is allowed as prayed and afresh grant shall issue in the name of the two surviving administrators.”

Analysis and Determination

7. Rectification of grants is provided for under 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:

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.”

8. 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.”

9. It is clear to me that the Grant can only be rectified in the following circumstances:
 - i. To correct errors in the names and descriptions of any person or thing.
 - ii. To correct errors as to the time or place of the death of the deceased.
 - iii. To correct errors in the purpose for which the limited grant was made.
10. The application before me is clearly outside the above provisions. It seeks more than what the law in the above provisions state. The application seeks to expunge the name of Silas Kepue . The reason given for this is that Silas Kepue , one of the three administrators died and therefore he cannot, together with his co-administrators, complete the administration of the estate. That is quite in order and the law under section 81 of the [Law of Succession Act](#) allows this. Section 81 provides that:

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

11. There is however a problem. The applicants have stated that Silas Kepue is the same person as Lekuria Ole Kebue Lepatei, whose National Identity Card is given as number xxxxxx and that this person died on July 27, 2021 as shown in an attached burial permit attached the supporting affidavit. I do not have any evidence to support this information other than what is stated in the affidavit.
12. The Grant was issued on February 18, 2019 with the name of Silas Kapue as one of the administrators. I wonder why they did not notice the anomaly in the names and seek rectification at that early time. To grant the order sought and expunge the name of Silas Kepue and find that he is the same one known as Lekuria Ole Kebue Lepatei, this court requires evidence to satisfy itself that we are talking about the same person. To my understanding of section 81 above, all the powers of the three administrators now vests in the two remaining administrators if one of the administrators is dead as stated here. They do not require a court order for that. All they have to do is to prove that the 3rd administrator is dead.
13. There is another problem. Adding Arroi Narresho Limited and substituting Nosim Group Limited with Osim Company Limited is outside the realm of rectification of grant. This court cannot issue those orders when sitting as a Probate Court. Parties to this application may have to pursue other means other than rectification of grant.
14. To emphasize on what can be rectified and what cannot, I refer to [In the matter of the estate of Geoffrey Kinuthia Nyamwinga \(deceased\)](#) [2013] eKLR where the court stated as follows:

“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...”



15. Having considered the issues before me in this application, it is clear to me that the only orders I can make in favour of the application are as the law provides. Consequently, I allow this application, partly, by correcting the names of the administrators and parties both in the Grant and the Certificate of Confirmation of Grant as follows:
- i. The name Paul Kepue is hereby corrected to read Paul Ntisho Ole Kepue .
 - ii. The name Anna Wanjiku Kepue is hereby corrected to read Annah Wanjiku Kipue .
 - iii. The name Kilusu Kepue is hereby corrected to read Kilusu Ole Kepue .
 - iv. The name Jacob Memusi Kepue is hereby corrected to read Memusi Kepue .
 - v. The name Innan Kepue is hereby corrected to read Chistine Inan Kepue .
 - vi. The name Pesi Kepue is hereby corrected to read Pesi Lene Oltimbau .
16. I decline to grant any other prayer for the reasons that the errors sought to be corrected fall outside the realm of rectification of grant as provided under section 74 and Rule 43, cited above.
17. Costs of this application shall be born by the estate of the deceased.
18. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 11TH JULY 2023.

S. N. MUTUKU

JUDGE

