



In re Estate of John Ogada Sam (Deceased) (Succession Cause E1900 of 2021) [2023] KEHC 22091 (KLR) (Family) (3 July 2023) (Ruling)

Neutral citation: [2023] KEHC 22091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1900 OF 2021
EKO OGOLA, J
JULY 3, 2023**

RULING

1. What is before this court is summons for rectification dated February 21, 2023. The administrators of the estate pray for the following:-
 1. That the grant of letters of administration Intestate issued to Joseph Samuel Oliech, be rectified in the following respect as provided for by rule 43(1) of the *Probate and Administration Rules*.
 2. That the Honorable Court be pleased to include for distribution as follows:-

List of Assets	Transmission To	Share
a. ABSA Bank Kisumu Branch Account Number-082202674	Joseph Samuel Oliech	100%
b. Kenya Commercial Bank Kisumu Branch Account Number-1135545936	Joseph Samuel Oliech	100%

3. That the cost of the application shall be provided for.
2. The application is supported by the affidavit of Joseph Samuel Oliech, the administrator of the estate. The late John Ogada Sam died intestate on June 5, 2021. He was survived by only his brother, Joseph



Samuel Oliech who was issued with Grant of Letters of Administration May 24, 2022. Subsequently a Certificate of Confirmation of grant was issued on January 18, 2023.

Determination

3. I have considered this Summons for Rectification of Grant and the Affidavits in support thereto. Rectification of Grants is provided for by section 74 of the [Law of Succession Act](#), cap 160, Laws of Kenya which 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.”

4. Rule 43(1) of the [Probate and Administration Rules](#) further stipulate that:-

“43(1) 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 of 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 in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

5. From the aforementioned provisions, rectification is allowed in order to correct a misdescription of a property or to correct a name which has not been fully or properly described in the Grant.

6. [In Re Estate of Charles Kibe Karanja \(Deceased\)](#) 2015 eKLR the Court held as follows:-

“If 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.”

7. From the foregoing, the applicant is seeking to rectify the Confirmed Grant by inserting assets that were not in the schedule of the estate when the grant was being issued and subsequently confirmed. These changes do not fall under the scope of rectification under section 74. However, rule 73 of the [Probate and Administration Rules](#) provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

8. Taking into consideration that there is only one beneficiary to the estate and to also, meet the end of justice, I hereby allow the Summons dated February 21, 2023 as prayed.

9. Cost of the Application be in the Cause.

It is so ordered.



DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF JULY 2023.

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E.K. OGOLA

JUDGE

