



**In re Estate of Philomena Wanjiru Mbugua alias Philomena Wanjiru Kimani Gatune (Deceased)
(Succession Cause 1033 of 2009) [2023] KEHC 22111 (KLR) (Family) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1033 OF 2009
EKO OGOLA, J
JULY 3, 2023**

RULING

1. What is before the Court is Summons for Rectification of Grant dated February 23, 2023. The administrator of the Estate, Lucy Wambui Mbugua pray for the following:-
 1. The Certificate of Confirmation of Grant issued by this Court on December 4, 2012 to David Muiruri Kimani Mbugua (Deceased) be rectified in the following respects as provided for by Rule 43(1) of the *Probate and Administration Rules*;
 - a. To delete the name David Muiruri Kimani Mbugua (deceased) as administrator of the estate of the deceased estate and substitute it with that of Lucy Wambui Mbugua who was duly appointed as administrator pursuant to the Grant of Letters of Administration Rectified on March 25, 2022 and further rectified on January 16, 2023.
 - b. To change the beneficiaries of the assets distributed to David Muiruri Kimani Mbugua as follows:-
 - i. Half share in Dagoretti/Riruta/1273 to go to Samuel Mbugua Muiruri
 - ii. Half share in NACICO SACCO Society (-4000 share in LR 209/7264) to go to Margaret Muthoni Muiruri
 - iii. Half share in Kenya Commercial Bank Limited (88 Shares) to go to Margaret Muiruri.
 2. That the distribution of the deceased assets therefore be as set out in the Affidavit by Lucy Wambui Mbugua.
 3. That the costs of this application be provided for.



2. The Summons were supported by a sworn Affidavit of Lucy Wambui Mbugua. She deposed that David Muiruri Kimani Mbugua who was the administrator of the estate died on 25th January 2018 without distributing the estate of the deceased in accordance with the Certificate of Confirmed Grant. The said David Muiruri Kimani Mbugua was the sole beneficiary of the estate and therefore his shares ought to devolve to his estate. It is for this reason that the Certificate of Confirmed Grant be amended, the administrator substituted and the estate be re-distributed.

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 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 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. I have perused the amendments intended to be made and the rectifications sought to be made by this summons. The amendments sought to be made are central and far reaching as it is proposed to replace the beneficiaries of the estate. There is intention to alter not only the beneficiaries to the estate but also the mode of distribution of the estate. This is not what was envisaged by section 74. Rectification of a Grant is only permissible to cure minor errors, mistakes and irregularities in the Grant. Rectification cannot be used to fundamentally alter the character of the Grant. The Applicant may consider filing a review of the Confirmed grant under Order 45 of the [Civil Procedure Rules](#).
7. The upshot is that the Summons for Rectification of Grant dated February 23, 2023 lack merit and is dismissed in its entirety.
8. Cost of Application be in the cause.

It is so ordered.

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

E.K. OGOLA

JUDGE



In the presence of:

Ms. Keiro for the Applicant

