



**In re Estate of Musa Kipkemboi Boit (Deceased) (Succession Cause E937 of 2020)
[2024] KEHC 15469 (KLR) (Family) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE E937 OF 2020

EKO OGOLA, J

NOVEMBER 19, 2024

IN THE MATTER OF THE ESTATE OF MUSA KIPKEMBOI BOIT (DECEASED)

IN THE MATTER OF

SERAH WANGARI CHERONO 1ST APPLICANT

MICHAEL KIPKOSGEI BOIT 2ND APPLICANT

LUCY CHELIMO BOIT 3RD APPLICANT

RULING

1. The Summons for rectification of grant before this court is dated 7th March 2024. The applicants pray for the following orders:-
 - a. That the grant of letters administration confirmed on 7th February 2022 be rectified and/or reviewed so as to reflect the following changes:-
 - i. That the name Shanice Jaberur Boit be captured as such and not Shanice Jeburur Boit.
 - ii. That Lucy Chelimo Boit and Shanice Jeberur Boit are to get one acre each to be hived from LR No. 13287/182 and Serah Wangari Cheronno is to get the remainder.
 - iii. That LR No. 13287/183 to be divided as follows:-Michael Kipkosgei Boit ID No. 33245953 ¾ acre Linner Chepngeno Mitei ID No. 11637108 1/8 acre Joyce Chepkirui Siele ID No. 22266200 ¼ acre Simon Gitonga ID No. 10544996 ¼ acre Michael Kipkosgei Boit ID No. 33245953 ¼ acre Serah Wangari Cheronno ID No. 6846644 to get the remainder
 - b. That there be no orders as to costs.



2. The application was based on the grounds set out therein and the applicants joint supporting affidavit. The applicants deposed that they recently discovered that the mode of distribution as presented ought to have been changed in order to cater for the interest of the creditors of the estate.

Determination

3. Rectification of grants is provided for in 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:

“74. Errors may be rectified by court:

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) 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.”

5. From the language of section 74 and Rule 43(1), the scope of rectification of grants of representation is limited to errors in names and descriptions of property. Hence prayer 1(a) is allowed.

6. The redistribution of assets does not fall within the meaning of the aforementioned provisions. 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 affected 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. However, this Court is still clothed with jurisdiction to issue orders that will meet the end of justice. 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. The upshot is that the Summons for Rectification dated 7th March 2024 are allowed. The Certificate of Confirmation of Grant is to be rectified forthwith according to prayer (1) of the Summons. Costs be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF NOVEMBER 2024

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E.K. OGOLA



JUDGE

In the presence of:

1st Applicant in person

Ms Gisiele M court Assistant

