



**In re Estate of Peter Athanasius Fernandes (Deceased) (Succession Cause E2985 of 2022) [2024] KEHC 15392 (KLR) (Family) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15392 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E2985 OF 2022  
EKO OGOLA, J  
NOVEMBER 12, 2024  
IN THE MATTER OF THE ESTATE OF PETER ATHANASIOUS FERNANDES (DECEASED)**

**IN THE MATTER OF  
JENNIFER PHILOMENA FERNANDES ..... 1<sup>ST</sup> APPLICANT  
JENIPET YVONNE BRIDGET FERNANDES ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. The Summons for rectification before this court is dated 17<sup>th</sup> July 2024. The applicants pray for the following orders:-
  - a. That the file (Succ. Cause No. E2985 of 2022) to be reopened for the purposes of Rectification of the Certificate of Confirmation of Grant dated 9<sup>th</sup> October 2023.
  - b. That the Certificate of Confirmation of Grant issued to the said administratixes in this matter on the 9<sup>th</sup> day of October 2023 be rectified to include the following as provided for by Rule 43(1) of the Probate and Administration Rules;

| Name   | Description of Property  | Shares of Heirs |
|--|--|-----------------|
| Jennifer Philomena Fernandes<br>Jenipet Yvonne Bridget Fernandes | 36,597 Ordinary Shares at Old Mutual Insurance Company Limited | Equal Shares    |



2. The Summons was based on the applicants' joint supporting affidavit. They deposed that there was an error apparent on the face of the Certificate of Confirmation of Grant, which left out the above-named property. The applicants annexed to their affidavit consent from the beneficiaries on the mode of distribution of the said shares.

### **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:

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“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. The inclusion of assets of the deceased does not fall within the meaning of the aforementioned provisions.
6. 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 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 17<sup>th</sup> July 2024 are allowed. Certificate of Confirmation of Grant to be rectified forthwith according to prayer (b) of the Summons. Costs be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF NOVEMBER 2024**



**E.K. OGOLA**

**JUDGE**

In the presence of:

Ms. Wachira for the Applicants

Ms Gisiele M court Assistant

