



**In re Estate of Gathua Kabucha Githuku (Deceased) (Probate & Administration
411 of 2011) [2024] KEHC 13640 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13640 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 411 OF 2011**

MA ODERO, J

NOVEMBER 4, 2024

IN THE MATTER OF THE ESTATE OF GATHUA KABUCHA GITHUKU (DECEASED)

BETWEEN

LUCY KARONGARI NDAMBI APPLICANT

AND

RUTH GATHONI GACHARIA RESPONDENT

RULING

1. Before this Court for determination is the Summons for rectification of Grant dated 5th February 2024 by which the Applicant Lucy Karongari Ndambi seeks the following orders;-

- “1. That the Honourable court be pleased to rectify the Grant of Letters of Administration Intestate issued on 26/04/2023 and Certificate of Confirmation of Grant issued on 26/04/2023 in the following respect as provided for by rule 43 (1) of the Probate and Administration Rules:-
- a. The name of the deceased herein be amended to read Gathua Kabucha Githuku instead of Gathua Kibocha Githungu
 - b. The name of the administratrix herein be amended to read Lucy Karongari Ndambi instead of Lucy Karungari Ndambi.
 - c. The names of some of the land parcels be amended to read as follows:-
 - i. Laikipia Salama Muruku Block 4/1111 (PESI) instead of Laikipia Salama Mukuru Block 4/41111 (PESI)



- ii. Laikipia Salama Muruku Block 1/2005 (Kieni East) instead of Laikipia Salama Mukuru Block 1/2005 (Kieni East).
 - iii. Laikipia Salama Muruku Block 1/895 (Kieni East) instead of Laikipia Salama Mukuru Block 1/895 (Kieni East)
 - iv. Laikipia Salama Muruku Block 4/359 (PESI) instead of Laikipia Salama Mukuru Block 4/359 (PESI)
 - v. Laikipia Salama Muruku Block 4/411 (PESI) instead of Laikipia Salama Mukuru Block 4/111 (PESI)
 - vi. Laikipia Salama Muruku Block 4/69 (PESI) instead of Laikipia Salama Mukuru Block 4/69 (PESI)
2. The application was supported by the Affidavit of even date sworn by the Applicant.
 3. The Respondent Ruth Gathoni Gachara opposed the application through the Grounds of opposition dated 8th April 2024 which raised the grounds
 - “ 1. That the application is bad in law, frivolous and a gross abuse of the court process.”
 4. The application was canvassed by way of written submissions.
 5. The Applicant filed the written submissions dated 2nd July 2024, whilst the Respondent relied upon her written submissions dated 4th July 2024.

Background

6. This succession case relates to the estate of the late Gathua Kabucha Githuku (hereinafter the Deceased’) who died intestate on 10th November 2003. A copy of the Death Certificate Serial Number 822206 is annexed to the Petition for Grant dated 9th May 2011.
7. There has been much litigation and activity in this file which the Court need not go into to suffice to note that a Grant of Letters of Administration Intestate was on 26th April 2023 made to the Applicant (See Annexure ‘LKN1’) to the Supporting Affidavit dated 24th February 2024)
8. The Applicant was also issued with a rectified certificate of Confirmed Grant on the same day 26th April 2023 (see Annexure LKN-‘2’)
9. The Applicant avers that the Confirmed Grant issued to her contains certain typographical errors and misdescriptions which she seeks to have rectified by this summons.
10. The Respondent who is a beneficiary to the estate opposed the summons for rectification of Grant.

Analysis And Determination

11. I have carefully considered the application before this court the Grounds of opposition filed by the Respondents as well as the written submissions filed by both parties.



12. 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 the confirmation, may be altered and amended accordingly.”

13. 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.

14. From the language of Section 74 of the *Law of Succession Act* and Rule 43(1) of the Probate and Administration Rules, the scope of rectification of grants of representation is limited to “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. I may add that such other minor errors in that genre could also be rectified.”

In Re estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR where the court stated:

“The law on rectification or alteration of grants in 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. The Applicant in her Summons has indicated the rectifications she seeks to have made to the Confirmed Grant. I have carefully perused the proposed amendments. They relate to the spelling of the name of the Deceased and the Applicant as well as the descriptions of the parcels of land to be inherited.

16. The Respondent has merely filed blanket Grounds of opposition. She has not demonstrated how the application was bad in law, frivolous or amounted to an abuse of court process. The Respondent did not file a Replying Affidavit thus there was no opposition in substance to any of the proposed amendments.

17. The Respondent submits that a Grant cannot be amended more than once. This is not the correct position at all. A grant may be rectified as many times as necessary so long as the amendment is sanctioned by the court.

18. The Respondent also requests that the court investigate how the Applicant came to be appointed as an Administrator of the estate. That is not an issue which can be entertained under the ambit of this Summon for rectification of Grant.

19. It appears that the Respondent has a problem with the appointment of the Applicant as an Administrator. That is an issue which the Respondent may seek to have considered under a separate



application. It is not an issue in this application. The Applicant has annexed a Grant issued to herself. That Grant remains valid unless and until it is revoked/annulled by a Court of law.

20. In conclusion I am satisfied that the amendments sought in this Summons for rectification do fall under the errors envisaged by Section 74 of the *Law of Succession Act*. Accordingly I allow the summons dated 5th February 2024 in terms of prayers 1(a), 1(b), 1(c) (i), (ii), (iii), (iv) (v) and (vi). Each party will meet their own costs for this application. It is so ordered.

DATED IN NYERI THIS 4TH DAY OF NOVEMBER 2024

MAUREEN A. ODERO

JUDGE

