



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CIVIL MISCELLANEOUS APPLICATION NO. CASE NO. 1 OF 2017**

**CORAM: R.E. ABURILL, J**

**IN THE MATTER OF THE ESTATE OF CHARLES MUNDU AWUOR (DECEASED)**

**CHARLES MUNDU AWUOR.....DECEASED**

**VERSUS**

**GEORGE OTIENO SIENGO.....APPLICANT**

**RULING**

1. I have considered the application dated 13/4/2021 under Certificate of Urgency. I certify it as urgent.
2. On the prayers for reconstruction of the court file in this matter, I have consulted the Registry Court Assistant Mr. Mohammed Akida who confirms that the court file was closed after confirmation of grant in 2017 and that ever since, the file has never been seen.
3. For that reason, I am satisfied that there is need to reconstruct the court file to deal with the emerging issue of rectification of Certificate of Confirmation of grant issued to the applicant herein as administrator of the estate of the late Charles Mundu Awuor.
4. ***Accordingly, I hereby grant prayer No. 1 of the application dated 13/4/2021 and order for reconstruction of the court file, with the applicant supplying all documents that form the basis of these succession proceedings and which are in his possession.***
5. On the prayer for rectification of Certificate of confirmed grant issued on 25/1/2017, I have perused the documents supplied to court. This matter initially originated from Kisumu High Court Succession Cause No. 233 of 2009 and was transferred to this court by Majanja J vide an undated Ruling which ruling also revoked the earlier grant issued to Maurice Awuor Siengo who had since died. The Learned Judge ordered that the revoked grant be reissued to the applicant George Otieno Siengo who was also appointed as administrator of the Estate of Charles Mundu Awuor - deceased. George Otieno Siengo was directed to apply for confirmation of the said grant within 60 days.
6. On 25/1/2017, Hon. Makau J confirmed the grant issued to George Otieno Siengo on the same date of 25/1/2017. However, the schedule of distribution names the deceased Maurice Awuor Siengo as the sole beneficiary which according to the applicant, was erroneous. I agree that the grant having been issued and confirmed in favour of George Otieno Siengo, the schedule of distribution could not be in favour of Maurice Awuor Siengo who had since been declared deceased by the court vide the Ruling by Majanja J in Kisumu HC Civil Misc. Succession Cause No. 233 of 2009. It was therefore an erroneous entry in the Certificate of Confirmed grant.
7. Rectification of grants or certificate of confirmed grant is anchored in the law. Section 74 of the Law of Succession Act provides:

***“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court.”***
8. Under Rule 43(1) of the Probate and Administration Rules:

***“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 or any person or thing or as to the time and 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.”***
9. In **The Matter of the Estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013]eKLR**, the court stated:

***“The law on rectification or alteration of grants is 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 description, or setting out of 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... ”***

10. In the present case, I am satisfied that the error of naming the deceased Maurice Awuor Siengo in the schedule of distribution of the estate is capable of rectification by this court as the grant cannot issue or be confirmed in favour of a deceased person even if he was an administrator prior to his demise.

11. As the court had already appointed George Otieno Siengo as the administrator of the estate of the deceased Charles Mundu Awuor, and as there is no objection filed, ***I hereby rectify the Certificate of Confirmation of grant issued to George Otieno Siengo on 25/1/2017 by this court and order that a fresh, rectified Certificate of confirmation of grant be reissued containing a schedule correctly giving or distributing the estate to George Otieno Siengo, to administer the estate in accordance with the law.***

12. File is now closed.

13. Orders accordingly.

**Dated, signed and delivered at Siaya, this 14<sup>th</sup> Day of April 2021**

**R.E. ABURILI**

**JUDGE**