

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 305 OF 2011
IN THE MATTER OF THE ESTATE OF THE LATE PETER
NZUKI MWALAI (DECEASED)

BETWEEN

LYDIA MBELEETE PETER.....1ST
PETITIONER

MICHAEL PETER NZUKI.....2ND
PETITIONER

AND

REGINA NDITHI
PETER.....OBJECTOR

RULING

1. By Summons for Rectification of Grant dated 4th July 2023, brought under sections 47 & 74 of the Law of Succession Act and rule 43 of the Probate and Administration Rules, the petitioners seek the following orders:

1. The Certificate of Confirmation of Grant issued in this cause on 16th June 2014 be rectified to have plot measuring 75 × 100 feet in land parcel title number Machakos/Kiandani/664 transferred to David Kasyoki Ndeto, Kevin Nthei Masila and Felix Musau Mutua instead of

***David Kasyoki Ndeto, Daniel Kioko Kavu and
Lucy Munaanyi Waita***

2. The costs of this application be in the cause.

2. The Summons is supported by the affidavit of the 2nd petitioner who deposed that the deceased, Peter Nzuki Mwalai, died on 11th March 1997. Thereafter, a grant of letters of administration was issued jointly to the petitioners on 4th July 2011 and confirmed on 16th June 2014. Copies of both grants were annexed to the affidavit.

The deponent stated that the plot in question was initially intended to be transferred to Daniel Kioko Kavu, David Kasyoki Ndeto, and Lucia Munaanyi Waita. However, before the transfer could be effected, Daniel Kioko Kavu passed away (death certificate annexed), and Lucia Munaanyi Waita withdrew from the group. As a result, the Petitioners resolved to have the property transferred to David Kasyoki Ndeto, Kevin Nthei Masila, and Felix Musau Mutua. Consent from the 1st Petitioner was annexed.

3. The record also includes an affidavit dated 11th June 2024 by Nelson Samuel Ndung'u Kioko, son of the late Daniel Kioko Kavu. He annexed a chief's letter dated 19th September 2018 and supported the application, stating that his father held the property in trust for a larger group and had no personal interest. He urged this court to allow the summons.

4. During hearing of the Summons counsel for the petitioners urged this court to allow the Summons as prayed. Miss Lucia Munaanyi Waita, appeared in person and confirmed that she had no objection to the application acknowledging that she is aware her name had been excluded from the new title.
5. I have considered the Summons, the supporting affidavits, oral submissions and the applicable law. The Petitioners seek to amend the confirmed grant by replacing two of the original beneficiaries with new individuals. They urged the court to rectify the grant confirmed on 16th June 2014 as follows: title number Machakos/Kiandani/664 measuring 75 × 100 feet be transferred in the names of David Kasyoki Ndeto, Kevin Nthei Masila and Felix Musau Mutua in the stead of David Kasyoki Ndeto, Daniel Kioko Kavuu and Lucia Munaanyi Waita.
6. Section 74 of the Law of Succession Act provides for rectification of grants in cases of errors in names, descriptions, or details regarding the deceased's death. It provides as follows:

“Errors in names and descriptions, or in setting fourth 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.”

7. Under Rule 43 of the Probate and Administration Rules, outlines the procedure for such rectification In the case of ***In re Estate of Khisa Joseph Leo Khaemba (Deceased)*** [2025] KEHC 11006 (KLR) the Court clarified that rectification is limited to correcting minor errors that do not substantially alter the substance of the grant. It held that;

“From the wording of these provisions which deal with rectification of grant, it is clear that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased’s death and place of death of the deceased. In general terms rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors are what rectification seeks to address. In the matter of the Estate of Geoffrey Kinuthia Nyamweinga 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 descriptions, or setting out of the time or place of 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...."

8. In this case, the Petitioners propose to substitute two original beneficiaries with individuals who were not parties to the initial succession proceedings. This is not a minor correction but a substantive change to the confirmed grant. It introduces new beneficiaries who were not even parties to the proceedings.
9. In effect the petitioners proposed changes go beyond the scope of rectification under Section 74 and Rule 43. Accordingly, I find that the Summons for Rectification of Grant dated 4th July 2023 lacks merit. It is hereby dismissed but with no orders as to costs.
10. It is so ordered.

Dated, signed and delivered at Machakos this 30th day of September 2025.

RHODA RUTTO
JUDGE

In the presence of;

.....Petitioners

.....Objector

Selina Court Assistant

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