



**Osoro & 2 others v Chakuwa & another; Onyari & 3 others (Interested Parties) (Probate & Administration 2 of 2024) [2025] KEHC 13310 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13310 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
PROBATE & ADMINISTRATION 2 OF 2024**

**WA OKWANY, J**

**SEPTEMBER 18, 2025**

**IN THE MATTER OF THE ESTATE OF MARIAM MORAA CHAKUWA (DECEASED)**

**-AND-**

**IN THE MATTER OF SECTION 74 OF THE LAW OF SUCCESSION ACT, CAP 160 AND RULE 43 (1) OF THE PROBATE AND ADMINISTRATION RULES**

**BETWEEN**

**CALVIN ONYARI OSORO ..... 1<sup>ST</sup> APPLICANT  
PACIFICA KWAMBOKA OSORO ..... 2<sup>ND</sup> APPLICANT  
ZIPPORAH GWARO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**ZABLON OSORO CHAKUWA ..... 1<sup>ST</sup> RESPONDENT  
RUTH NYANCHAMA OIRERE ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**FRANCIS ABINCHA ONYARI ..... INTERESTED PARTY  
JOSEPHAT MONG'ARE ONSONGO ..... INTERESTED PARTY  
EVANS NYABANDO ONYARI ..... INTERESTED PARTY  
JOHN NYABANDO OMARI ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect to two applications dated 22<sup>nd</sup> October 2024 (the 1<sup>st</sup> Application) and 6<sup>th</sup> February 2025 (the 2<sup>nd</sup> Application).



2. Through the 1<sup>st</sup> Application, the Applicants seek rectification of the Grant issued on 5th August 2021 in Nyamira CM Succession Cause No. 82 of 2020 and confirmed on 4th November 2021. They urge that two properties, namely; L.R. No. EAST Kitutu/Mwamangera/2596 and L.R. No. East Kitutu/Mwamangera/2597, were intentionally omitted from the list of assets forming part of the estate of the deceased, Mariam Moraa Chakuwa, and that the omission was designed to enable the 1st Respondent to dispose of the same for his personal gain. They therefore seek cancellation of the subdivisions and reversion of the said parcels to the estate for redistribution among all beneficiaries.
3. The 1<sup>st</sup> Respondent opposed the Application through an affidavit sworn on 16th April 2025 and a Notice of Preliminary Objection of even date. He avers that the deceased had, during her lifetime, distributed her estate among her children and disposed of some parcels to third parties. He states that some of the disputed sales were done by his late brother, Isaac Makori Chakuwa and witnessed by his wives. He accuses the Applicants for intermeddling with the estate by purporting to sell land without a grant.
4. The 1<sup>st</sup> Respondent further states that the Succession Cause before the Chief Magistrate's Court was a nullity ab initio as the value of the estate exceeds the pecuniary jurisdiction of that Court. He adds that the rectification as sought is beyond the scope of Section 74 of the Law of Succession Act, which is limited to clerical or arithmetical errors and not substantive alterations. It is the 1<sup>st</sup> Respondent's case that this Court lacks jurisdiction to entertain a rectification application in respect of a Grant that was itself defective in law.
5. The 2<sup>nd</sup> Respondent did not oppose the Application.
6. The Application was canvassed by way of written submissions which I have considered.
7. I find that the main issues for determination are as follows: -
  - a. Whether the Application for Rectification of Grant is properly before this Court considering Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules.
  - b. Whether this Court has jurisdiction to rectify a Grant issued by a Magistrate's Court that subsequently declared itself devoid of pecuniary jurisdiction.
  - c. Whether the omissions and transfers complained of fall within the purview of rectification or whether they amount to substantive disputes requiring revocation or fresh succession proceedings.
  - d. What orders are appropriate in the circumstances.

### **Analysis and Determination**

8. Section 74 of the Law of Succession Act (the Act) stipulates as follows on rectification of grant:
  74. Errors may be rectified by court  
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, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.
9. Rule 43 of the Probate and Administration Rules (the Rules) provides for the procedure for rectification of grant as follows: -



43. Rectification of grant
1. 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 the 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 issued.
  2. Unless at the time of issue of the summons the registrar otherwise directs there shall be filed with the summons an affidavit in Form 13 by the applicant containing such information as is necessary to enable the court to deal with the matter.  
  
The summons, together with the affidavit (if any), shall without delay be laid by the registrar before the court which may either grant the application without the attendance of any person or direct that it be set down for hearing on notice to the applicant and to such other persons (if any) as the court shall think fit.
10. Section 74 of the Act is clear that “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” while Rule 43 (1) elaborates that rectification is confined to clerical or arithmetical errors or errors arising from accidental slips or omissions.
11. In the matter of the Estate of Hasalon Mwangi Kahero [2013] eKLR, the court stated that:-  
  
“when dealing with an application for rectification of grant to add a full name of person who was omitted. An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error” It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.”
12. In Re estate of Charles Kibe Karanja (Deceased) [2015] eKLR the Court held thus: -  
  
“24. Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the court has confirmed the grant or heir or survivor of the deceased who had previously been unheard of materializes after distribution, the court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed. (See also; Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] eKLR)”
13. Courts have consistently held that rectification does not extend to substantial alterations such as inclusion or exclusion of assets. This is the position that was taken In re Estate of Geoffrey Kinuthia



Nyamwinda (Deceased) [2013] eKLR; In the Matter of the Estate of Wahome Mwenje Ngonoro (Deceased) [2016] eKLR).

14. In the instant case, the Applicants seek not only inclusion of omitted assets but also cancellation of titles and redistribution of the estate. I find that this goes far beyond the scope of rectification as provided for under the Act and the Rules. My view is that the proper remedy would have been the revocation or annulment of the Grant under Section 76 of the Act, or fresh proceedings before a court of competent jurisdiction.

### **Jurisdiction**

15. The 1st Respondent raised the issue of the value of the estate being above Kshs. 20 million which, according to him, was way beyond the jurisdiction of the Chief Magistrate's Court under Section 48 (1) of the Act (as amended). It was not disputed that the pecuniary jurisdiction of the magistrates court was the subject of an application dated 5<sup>th</sup> December 2022 and that in an order issued on 6<sup>th</sup> December 2024, the Lower Court transferred the matter to this Court on account of want of jurisdiction.
16. In Re Estate of GKK (Deceased) [2017] eKLR, the court held that where a subordinate court assumes jurisdiction without pecuniary mandate, the proceedings are null and void. Similarly, in the oft cited case of Owners of Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1, Nyarangi JA held that jurisdiction is everything; without it, a court must down its tools.
17. My finding is that it follows that the Grant issued in Nyamira CM Succession Cause No. 82 of 2020 was a nullity ab initio as the said court lacked jurisdiction, in which case, this Court cannot purport to rectify a defective Grant as to do so would amount to sanitizing an illegality.

### **Disputed Transfers and Sales**

18. Turning to the allegations of intermeddling, fraudulent transfers, and sales by the Respondents and other beneficiaries, I find that these are weighty matters that cannot be resolved through rectification. These are matters that may require fresh succession proceedings, where evidence may be led, purchasers heard, and the estate properly ascertained. My finding is that, in the circumstances of this case, the inclusion or exclusion of assets are substantive issues to be determined at confirmation of Grant or in revocation proceedings, not rectification.

### **Conclusion and Orders**

19. Having regard to the findings and observations that I have made in this ruling, I make the following orders: -
  - a. The Application for rectification is incompetent and misconceived, the prayers sought being outside the scope of Section 74 of the *Law of Succession Act*.
  - b. The Grant sought to be rectified emanated from a court lacking pecuniary jurisdiction and is therefore a nullity in law.
  - c. The disputes as to sale, transfer, and distribution of the deceased's properties can only be ventilated through a fresh succession cause filed before this Court, being a court of competent jurisdiction.
20. Accordingly, the Summons for Rectification of Grant dated 22nd October 2024 is hereby struck out. Parties are at liberty to institute fresh succession proceedings before this Court in respect of the estate of the deceased, Mariam Moraa Chakuwa.



21. Given the family nature of the dispute, each party shall bear their own costs.

### **The 2<sup>nd</sup> Application**

22. The 1st Respondent/Applicant filed a second application dated 6th February 2025 seeking revocation of the Grant of Letters of Administration issued in Nyamira Chief Magistrate's Court Succession Cause No. 82 of 2020. He also prayed for revocation and setting aside of the confirmation orders of 4th November 2021, cancellation of subdivisions from the deceased's estate, stoppage of ongoing construction, and redistribution of the estate equitably among beneficiaries.
23. The application is based on the assertion that the Chief Magistrate's Court lacked pecuniary jurisdiction as the estate exceeded Kshs. 20 million thus rendering the proceedings defective. He contended that the Grant was obtained fraudulently by concealment of this material fact and that the confirmed Grant had been implemented to the detriment of other beneficiaries. He urged the Court to halt activities premised on the impugned Grant and to assume jurisdiction to redistribute the estate afresh.
24. The 2nd Respondent, Ruth Nyanchama, swore an affidavit in opposition to the application wherein she contends that the Grant was not fraudulently obtained, that the valuation relied upon was prepared in 2022 long after the succession proceedings commenced in 2020, and that it was meant for insurance purposes rather than probate. She argued that the Applicant was dissatisfied with the equal distribution of the estate ordered by the Magistrate's Court and had filed multiple unsuccessful applications to overturn it.
25. She further stated that the family had consented to accommodate a purchaser, Peter Ondieki, since the funds received from his purchase were used for the deceased's medical expenses and that he was already in occupation. She asserted that the estate was thereafter distributed equally, beneficiaries received their titles, and some had sold portions to third parties who were not parties to this case. She accused the Applicant of misconduct, including harassment of vulnerable beneficiaries, and of irregularly selling portions of land himself without the knowledge of others. She urged the Court to dismiss the application, as no valid grounds for revocation had been established under the Act.
26. The Application was canvassed by way of written submissions which I have considered. The main issues for determination are as follows: -
- a. Whether the Grant issued by the Chief Magistrate's Court on 5th August 2021 and confirmed on 4th November 2021 is liable to revocation under Section 76 of the *Law of Succession Act*.
  - b. Whether the proceedings before the Chief Magistrate's Court were defective for want of jurisdiction.
  - c. Whether the Applicant has established sufficient grounds such as fraud, concealment of material facts, or maladministration to warrant revocation.
  - d. What orders should issue in the circumstances.



## Analysis and Determination

### Jurisdiction

27. I have, elsewhere in this ruling, already found that the Chief Magistrate's Court lacked the pecuniary jurisdiction to deal with this estate. Section 48(1) of the *Law of Succession Act* (as amended) limits magistrates' jurisdiction to estates not exceeding Kshs. 20 million in value.

### Revocation

28. Section 76 of the Act provides as follows on revocation of grant: -

76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
- a. That the proceedings to obtain the grant were defective in substance;
  - b. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
  - c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
  - d. That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
    - i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
    - ii. To proceed diligently with the administration of the estate; or
    - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; orThat the grant has become useless and inoperative through subsequent circumstances.

29. In the instant case, the Applicant invoked both defective proceedings and concealment of facts as the reason for seeking revocation of grant. The Respondent countered that the valuation report came after filing of the succession cause and was not determinative at the time. I however note that the pecuniary jurisdiction of the court is not determined by post facto valuations but by the actual value of the estate. I am of the view that where there is credible evidence that the estate was worth over Kshs. 20 million as was the case in the instant succession cause, then the proceedings were indeed defective. I find that this alone is a sufficient ground for revocation under Section 76(a).

### Fraud and Concealment

30. The Applicant alleged deliberate concealment of the estate's true value while the Respondent denied this, attributing the valuation report to a third party. While evidence of deliberate fraud is contested, the Court need not delve into subjective intent if jurisdictional incompetence is established.



### **Implementation of the Grant**

31. It was not contested that titles were issued, some beneficiaries sold their shares, and that third-party purchasers are now involved. My view is that this complicates the situation, but it does not sanitize an otherwise defective Grant. The proper approach, as stated in *Re Estate of Wahome Mwenje Ngonoro (Deceased)* [2016] eKLR, is to revoke the defective Grant and allow fresh proceedings where all parties, including purchasers, can ventilate their claims.

### **Conclusion and Orders**

32. This Court finds that the proceedings before the Chief Magistrate's Court were defective for want of pecuniary jurisdiction and that the Grant issued on 5th August 2021 and confirmed on 4th November 2021 is a nullity. Accordingly, I issue the following final orders: -
- a. The Grant of Letters of Administration issued in Nyamira CM Succession Cause No. 82 of 2020 is hereby revoked pursuant to Section 76 of the *Law of Succession Act*.
  - b. The orders confirming the said Grant on 4th November 2021, the Certificate of Confirmation of Grant, and any transactions carried out pursuant thereto are hereby set aside, subject to further directions of this Court.
  - c. To preserve the estate, there shall be an order of status quo maintaining the current possession and use of the properties, pending the filing of fresh succession proceedings before this Court. No further subdivisions, sales, or constructions shall be undertaken until further orders.
  - d. Parties are at liberty to file a fresh petition for letters of administration intestate in this Court, where all beneficiaries and purchasers shall be accorded a hearing.
  - e. Given the family nature of the dispute, each party shall bear their own costs.

Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**W. A. OKWANY**

**JUDGE**

