



**In re Estate of Gathi Mwathe (Deceased) (Succession Cause
151 of 2007) [2025] KEHC 13939 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13939 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 151 OF 2007
RN NYAKUNDI, J
OCTOBER 6, 2025**

IN THE MATTER OF THE ESTATE OF LATE GATHI MWATHE (DECEASED)

IN THE MATTER OF

**JOHNNES MWANGI GATHI 1ST PETITIONER
JOSEPH HINGA GATHI 2ND PETITIONER
JAMES WAINAINA MWANGI 3RD PETITIONER
PETER NJOROGE MWANGI 4TH PETITIONER**

RULING

1. What is pending before this Court for determination is Summons for Rectification of Grant dated 22nd May 2025 Grant brought pursuant to section 74 of the [Law of Succession Act](#) where the Petitioners are seeking the following orders:
 - a. That the Grant issued to Johnnes Mwangi Gathi, Joseph Hinga Gathi, James Wainaina Mwangi & Peter Njoroge Mwangi the Petitioners in this cause on 22.03.2022 and confirmed on 11.10.2024 be rectified.
 - b. That the list of the deceased and beneficiaries from the estate of the deceased be amended to reflect names of all the beneficiaries in share No. 215 Gachororo Limited and to reflect the correct parcel numbers of the assets belonging to the deceased.
2. The Application is made on the following grounds on the face of it among others;
 - a. That sufficient cause exists to warrant the grant of the orders sought.
 - b. That the application has been made without unreasonable delay.
 - c. That no party shall suffer any prejudice should this application be allowed.



- d. That this Honourable court has unfettered discretion to allow this application.
3. The Application is supported by the annexed affidavit dated 22nd May 2025 sworn by Joseph Hinga Gathi who deponed as follows: -
 - a. That the Grant of Letters of Administration of the estate of the late GATHI MWATHE (deceased) were made to the petitioners on 22.03.2022 and confirmed on 11.10.2024.
 - b. That some of the list of assets of the deceased were erroneously captured and all the beneficiaries in share No. 215 at Gachororo limited in the estate of the deceased of the deceased were inadvertently not captured accordingly and the same should be amended to reflect names of all the beneficiaries in share No. 215 at Gachororo Limited and to reflect the correct parcel numbers of the assets belonging to the deceased and confirmed as per the corrected list annexed hereto.
 - c. That it is desirable that the grant be rectified by this Honourable court to reflect names of all the beneficiaries in share No. 215 at Gachororo Limited and to reflect the correct parcel numbers of the assets belonging to the deceased.
 - d. That the rectification and/or amendment will go a long way towards expeditious disposal of this cause.

Analysis and Determination

4. The legal framework on the rectification of grant is provided for in section 74 of the [*Law of Succession Act*](#) as read with Rule 43 of the Probate and Administration Rules. Specifically, section 74 provides as follows;
 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.
5. Rule 43(1) of the Probate and Administration Rules also 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 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.'
6. Rectification of a grant of Letters of Administration is therefore limited to matters set out under section 74 of the [*Law of Succession Act*](#). Under this provision rectification of grant deals specifically with correction of error which the court may order without changing the substance of the grant. This includes errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is visualized under the Section is a mistake which may occur on the face of the grant like typing errors in names of persons or the things. A rectification seeking to include properties which were not in the schedule of the assets when filing the cause and not included in the grant may not fit in the matters provided under Section 74 of the Act.



7. In the matter of the Estate of Hasalon Mwangi Kahero [2013] eKLR, the court stated;

“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's 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.”

8. Similarly, the court in Re Estate of Charles Kibe Karanja (Deceased) [2015] eKLR (W Musyoka J) interpreting section 74 of the Law of Succession Act elaborated as follows:

'From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the court through Section 74 of the Law of Succession Act, for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or 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 effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.'

9. The Petitioners aver that the grant was issued on 22.03.2022 and confirmed on 11.10.2024, certain assets were erroneously captured and all beneficiaries in share No. 215 at Gachororo Limited were inadvertently omitted from the recorded list. They have annexed a corrected list as the 2nd Petitioner deponed which is on the record. The matters complained of including omission of beneficiary names in a particular share and incorrect parcel numbers prima facie fall within the class of errors that section 74 of the Law of Succession Act contemplates: those are errors of description (names/parcel numbers) rather than an attempt to create new substantive claims.

10. Accordingly, for the reasons set above, this court makes the following orders: -

a. The grant issued on the 22nd day of March 2022 and confirmed on 11th October 2024 be and is hereby rectified to indicate as follows;

Schedule



No	Description of Property	Share	Beneficiary
1.	Kapsaret/Kapsaret Block 1 (Yamumbi) No. 367- Measuring 4 Acres	Whole	Samuel Kamau Mwangi
2.	Juja/Kiaura Plot 12506/210- Measuring 0.0585 Ha	Whole	Peter Njoroge Mwangi
3.	Kiganjo/Handege Plot T/96	Whole	Peter Njoroge Mwangi
4.	Market Lockup No. 215	Whole	Peter Njoroge Mwangi
5.	Kiganjo/Handege Plot No. 669	Whole	Peter Gitua Muhia
6.	Juja/Kiaura Block 1/171- Measuring 0.8811 Ha	Equally	Johnnes Mwangi Gathii Joseph Hinga Gathi, James Wainaina Mwangi & Mary Wairimu Kabuga
7.	Juja/Kiaura Block 1/643- Measuring 0.20 Ha	Equally	Johnnes Mwangi Gathii Joseph Hinga Gathi, James Wainaina Mwangi & Mary Wairimu Kabuga
8.	Share No. 215 at Gachororo Farmers Limited	Equally	Johnnes Mwangi Gathii Joseph Hinga Gathi, James Wainaina Mwangi, Mary Wairimu Kabuga, Samuel Kamau Mwangi & Peter Njoroge Mwangi

b. A rectified Grant to issue with the changes in clause (a) above.



c. There shall be no order as to the costs.

d. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 6TH DAY OF OCTOBER 2025

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R. NYAKUNDI

JUDGE

