



**In re Estate of Joseph Muchiri Kagwe (Deceased) (Succession Cause  
216 of 2016) [2025] KEMC 121 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEMC 121 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
SUCCESSION CAUSE 216 OF 2016  
PA NDEGE, SPM  
MARCH 21, 2025  
IN THE MATTER OF THE ESTATE OF JOSEPH MUCHIRI KAGWE (DECEASED)  
IN THE MATTER OF  
KAGWI MUCHIRI ..... APPLICANT**

**RULING**

1. This matter relates to the estate of Joseph Muchiri Kagwe (deceased) and what is pending before this court is a summons dated 07/11/2023. The summons is brought under Section 47 and Section 74 of the *Law of Succession Act* (Cap160 Laws of Kenya). The applicant seeks an order that the certificate of confirmation of grant be amended and/or rectified. The applicant seeks amendment and/or rectification to include alias name of the deceased Joseph Muchiri Kagwe Alias Muchiri Kagui. The applicant also seeks that the costs of this application be provided for.
2. The Application is based on the supporting affidavit of the applicant sworn at Nakuru on 07/11/2023; and the 4 grounds on the face of it, inter alia that: -
  - i. The deceased name on title number Rongai/lengenet Block 5/185 (kandutura) Is Muchiri Kagui.
  - ii. The Applicant realized after receiving certificate of confirmation of a grant that deceased alias name Muchiri Kagui was not included.
  - iii. It is expedient that this application be heard on priority basis for it is in the best interest of the estate.
  - iv. All the beneficiaries have consented to the same being rectified.
2. Though the application is ex parte, with no opposition, it is not that every such application must be allowed as a matter of course. As I court of law, I still have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any ex parte or unopposed



application, the court will as a matter of course grant the sought orders. As held by the Supreme Court of Kenya in *Gideon S. Konchellab Vrs Julius L. Sunkuli & 2 Others* [2018] e KLR, it behooves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted.

3. I have looked at the application herein. There is only one issue for determination herein. This is whether the application has satisfied the conditions set for this court to order the rectification and/or amendment of the grant. I will proceed to examine the application on this issue.

4. The jurisdiction of this court to order rectification of grant is donated by Section 74 of the *Law of Succession Act*. The Section 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, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

2. The marginal notes under the section states that errors may be rectified by the court. On the other hand, Rule 43(1) of the *Probate and Administration Rules* provides: -

Where the holder of grant seeks pursuant to 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 and places 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.

2. 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 is what rectification seeks to address. In *In The Matter of the Estate Of Geoffrey Kinuthianyamweinga Deceased* [2013] eKLR it was 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...

2. Other matters which may substantially affect the grant are best addressed through an application for review or appeal. The applicant seeks rectification of the name of the deceased to include an alias. The applicant claims that the alias name is on the title number Rongai/ Lengenet Block 5/185 (kandutura). That the deceased was the proprietor of the land title sought to be inherited herein through the alias name. However, there is no document or any other proof annexed that the deceased had the alias name, and whether he held such a title in such a manner. At paragraph 3 of the Affidavit in Support, the applicant deposed that he had attached a copy of the clearance certificate for issuance of title deed. However, going through the application and the affidavit, no such document was attached and commissioned as required. There is thus no evidence that the deceased had such an alias name, or that he owned the parcel of land with such an alias name.



3. Without the annexure or attachment, this court finds no evidence to support the application. The alias name proposed is not merely a typographical error on the application for confirmation herein. There is thus nothing to show that there was an error on the name of the deceased. If, as claimed, the applicant realized this alias name after the confirmation of the grant and when they presented the grant to the Nakuru Lands Registry for purposes of transfer to the beneficiary, then that error need to be evidenced. I therefore find that the grounds seeking the rectification and/or amendment herein to be without proof. And I do hereby dismiss the application with no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 21<sup>ST</sup> DAY OF MARCH 2024**

**ALOYCE -PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Applicant's counsel: Musili

Applicant: n/a

Beneficiaries: n/a

