



REPUBLIC OF KENYA



**In re Estate of the Late Amos Odhiambo Ochieng (Succession Cause E598 of 2021) [2024] KEMC 56 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEMC 56 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
SUCCESSION CAUSE E598 OF 2021  
PA NDEGE, SPM  
SEPTEMBER 26, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE AMOS ODHIAMBO OCHIENG**

**RULING**

1. Before me is a Summons for Rectification of the grant herein, brought pursuant to the provisions of section 74 of the *Law of Succession Act* and Rule 43(1) of the *Probate and Administration Rules*, in which the applicant, Dorothy Akinyi Demba, one of the administrators herein, is seeking for an order that the Certificate of Confirmation of grant dated 09/03/2023 be further rectified to add Edwin Victor Ochieng as one of the administrators to the estate; and further that the costs of the application be borne by the estate.
2. The application is premised on the 5 grounds on the face of its, and the Supporting Affidavit of Dorothy Akinyi Demba, the applicant, sworn at Nakuru on 28/06/2024; mainly that: -
  - a. The deceased died intestate
  - b. Dorothy Akinyi Demba And Edwin Victor Ochieng' petitioned for representation intestate of the estate as per the letters of administration intestate issued by this court on 10/06/2022.
  - c. The name of Edwin Victor Ochieng' was erroneously left out in the certificate of confirmation of the grant
  - d. It is just and expedient that the application be allowed as prayed
  - e. No one will suffer any prejudice if the application is allowed.
3. I have considered the Application for Rectification of Grant dated 28/06/2024, the grounds and the averments in the Supporting Affidavit. The only issue for my determination was whether the prayer for rectification of the Grant is merited. The law on rectification of Grants is found in section 74 of the *Law of Succession Act* which 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.

4. Rule 43(1) of the Probate and Administration Rules provides: -

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.

5. The above referenced sections of the law have been expounded upon by several court decisions. *In RE Estate Of Henry Mwithimbu Karigu (deceased)* (2020) eKLR, the court held: -

From the language of section 74 of the *Law of Succession Act* and Rule 43(1) of the Probate and Administration Rules, the scope of rectification of grants of representation is limited to 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. I may add that such other minor errors in that genre could also be rectified.

6. Similarly *in RE Estate Of James Wainaina Ng'ang'a (deceased)* (2021) eKLR, the court held: -

Rectification is allowed in order to correct a mis-description of a property or to correct a name which has not been fully or properly described in the Grant.. Rectification of a Grant is only permissible to cure minor errors, mistakes and irregularities in the Grant. Rectification cannot be used to fundamentally alter the character of the Grant. (Emphasis mine)

7. It is therefore clear that the primary document in a succession or probate cause is not the certificate confirming a grant; but the grant itself. A certificate of confirmation of a grant is not a grant of representation, but a certificate to the effect that the grant had been confirmed by the court. The discretion given to the court by the provisions in section 74 of the *Law of Succession Act* is for rectification of grants of representation, not certificates that confirm those grants. There is therefore no power in those provisions for the court to rectify a certificate of confirmation of grant. As can be seen from the outset, the application herein stands on shaky ground.

8. I am being invited to rectify a certificate of confirmation of grant. The certificate is not an order of the court. A certificate is not a judicial order. It is an extract from a court order made in the confirmation proceedings. The certificate is generated from the court order. It is important for the parties to differentiate between the character of a grant of representation and a certificate of confirmation of grant. A grant is a court order; it is a judicial pronouncement to the effect that some person has been appointed as administrator and granted the power to act as such. The certificate of confirmation of grant on the other side merely certifies that orders have been made to confirm the grant. The certificate of confirmation of grant is not the order itself but a confirmation that the grant has been confirmed and the shares of the beneficiaries ascertained.

9. Perhaps I could exercise inherent power under Rule 73 of the Probate and Administration Rules, where such power is saved to meet the ends of justice or to prevent abuse of the process of court. The Applicant has not invoked Rule 73, but the power is inherent as the court can tap on it at any time when it appears that it may be necessary to meet the ends of justice. I understand the Applicant to be inviting me to rectify a certificate of confirmation of grant dated 09/03/2023, on the ground that a typing error at our registry omitted a name of an administrator who petitioned for a grant alongside the applicant



herein, and that the grant issued herein was issued jointly in their names. There is no contestation as to the distribution of the estate to a beneficiary/ies or misdescriptions of names which can only be rectified if the misdescription occurred in the grant itself and not the certificate confirming it.

10. What is sought to be rectified here is not the grant itself, but the certificate that was issued upon the confirmation of the grant. In principle, the Applicant appears to be unhappy with the typing process in the confirmation process. That is what comes out from the body of the application herein. The principal prayer in the application is for rectification of the certificate of confirmation of grant.
11. As stated above, the principal concern of the Applicant is the confirmation certificate of the grant. What she seeks principally is rectification of the certificate of confirmation of grant. The question then that arises is whether a certificate of confirmation of a grant is in fact a grant of representation intestate or the equivalent of a grant, to be rectified through section 74 of the [Law of Succession Act](#). The answer to that question, has already appeared to me, to be that a certificate of confirmation of grant is not a grant of representation.
12. Grants of representation take the form stated in sections 53 and 54 of the [Law of Succession Act](#). They are either a grant of probate or of letters of administration intestate or of letters of administration with will annexed or limited grants. A certificate of confirmation of grant does not take any of those forms, and it cannot possibly, therefore, be a grant of representation. It is a document extracted from the orders that a court makes after confirmation of a grant under section 71 of the [Law of Succession Act](#), as evidence by the fact that a grant of representation has been confirmed. It should be emphasized that the confirmation process does not produce another grant.
13. The grant sought to be confirmed, through that process, remains intact, after confirmation. Whereas a grant of representation appoints personal representatives or administrators, the certificate of confirmation does not do anything of that sort. All what it does is to confirm that the court has approved the persons appointed under the grant to continue to administer the estate, with a view to distribute it in accordance with the distribution schedule approved. A certificate of confirmation of grant is akin to that order or decree that is extracted from a ruling or judgement made by a court; it is an extract of the orders that the court makes on an application for confirmation of grant. Quite clearly, therefore, a certificate of confirmation of grant is not a grant of representation, and for that reason it is not available for rectification under section 74 of the [Law of Succession Act](#).
14. In any event, as the certificate of confirmation of grant is a mere formal expression of the orders made by the court on a confirmation application, the rectification of the certificate, if at all it is rectifiable under section 74, which I continue to assert that it is not, would be of little consequence, as it is only the certificate that would be affected by such a rectification order, since the orders on confirmation, from which it is extracted would remain intact. The certificate is a mere extract, its rectification, and even revocation, would not affect its source, the orders of confirmation of grant. A grant of representation is not equivalent to a certificate, it is not an extract from some order, and it is the order itself, appointing administrators, and it is the court granting representation. The orders on confirmation of a grant remain unaffected by a rectification of the certificate of confirmation of grant. The grant of representation and the certificate of confirmation of grant are two separate or different things.
15. The certificate of confirmation of grant is provided for under Rule 41(5) of the [Probate and Administration Rules](#), which says as follows:

Where the court in exercise of its power under section 71(2) (a) of the Act directs that a grant be confirmed it shall cause a certificate of such confirmation in Form 54 to be affixed to the grant together with the seal of the court and ...



16. Section 74 of the *Law of Succession Act* has nothing to do with confirmation of grants. It carries no provisions which relate to what a court should do with confirmation orders or certificates of confirmation of grant. Indeed, the provision says nothing about the powers prescribed in it being used for the purpose of the court intervening in the confirmation process, once orders are made on a confirmation application.
17. I have keenly perused through the provisions of the *Law of Succession Act*, and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders. Sections 71, 72 and 73 of the *Law of Succession Act*, which deal with confirmation of grants, do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with flaws in the confirmation process. As stated above, section 74 has nothing to do with the confirmation process, and provides no relief at all to any person unhappy with the confirmation process. In the absence of any provision in the *Law of Succession Act*, for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal and review, to the extent that the same is permissible under the *Law of Succession Act*. I would believe that one can also apply for the setting aside or vacating of confirmation orders.
18. I reiterate that the power or discretion granted to the court by sections 74 of the *Law of Succession Act* is for rectification of grants. The ideal situation, where a person is unhappy with the process of confirmation of grant, for it would appear that that is what the applicant herein is aggrieved about, is not to move the court under section 74 for rectification of grant, as the reasons that I have discussed in the foregoing paragraphs show. The court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.
19. The grant herein was confirmed on 09/03/2023, and this court became functus officio so far as confirmation of the grant was concerned. The applicant should have mounted an application for review of those orders, if she had the competence to file such an application, and if she had grounds upon which she could urge review. This court is being invited to relook at confirmation certificate through a process that has not been provided for in law.
20. I have talked about the trial court which confirmed a grant being functus officio. The grant herein was confirmed on 09/03/2023, and a certificate of confirmation was generated from that order. After a grant has been confirmed, the processes that follow, that is to say with respect to the implementation or execution of the confirmation orders as encapsulated in the certificate of confirmation of grant, have nothing to do with the *Law of Succession Act*, as the said law or the rules made under it, the Probate and Administration Rules, do not provide for what should happen after the certificate of confirmation of grant has been generated from the confirmation orders. The process of the carrying into effect of the confirmation orders is regulated by land legislation through a process known as transmission, which is not provided for under the *Law of Succession Act*. I believe that I have said enough. It follows therefore that I shall not be in error if I dismiss the applicant's application dated 28/06/2024. Consequently, I find no merit in this application. The same is dismissed.

It is so ordered.

**DATED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF SEPTEMBER., 2024.**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of:

.....Akango.....for Applicant



Akango: Praying for a certified copy of the ruling.

CT: Certified copy of the ruling be supplied to the counsel upon payment of any requisite fee.

