

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 14 of 2020
IN THE MATTER OF THE ESTATE OF THE LATE DAVID
MAWATHE KITABI alias DAVID KITAVI (DECEASED)

DAVIS ZANGI MUTAU.....1ST
ADMINISTRATOR

DANIEL MUINDUKO MAWATHE.....2ND
ADMINISTRATOR

RULING

1. By Summons for Rectification of Grant dated 11th June 2025, brought under sections 74 of the Law of Succession Act and Rule 43 and 59 of the Probate and Administration Rules, the Petitioner seeks orders to further rectify the Certificate of Confirmation of Grant issued to Davis Zangi Mutau & Daniel Muinduko Mawathe which was previously rectified on 5th July 2022. The rectification is as follows:

1. Property LR No. 12431/403 known as LR No 209/440 which had a typical error be rectified to reflect the correct LR. No 209/4401/637 (new converted LR No Nairobi/Block56/633)

2. The Summons is supported by the affidavit of Davis Zangi Matau who deposes that the correct property title is LR.No 12431/403 known as LR No. 209/4401/637(new converted LR

No Nairobi/Block 56/633). A copy of the title deed was annexed as evidence of the correct title number.

3. 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.”

4. 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....”

5. In this instance, the Petitioners seek to rectify the land title number from **Property LR No. 12431/403 known as LR No 209/440** which had a typical error be rectified to reflect the correct LR. No 209/4401/637 (new converted LR No Nairobi/Block56/633). During hearing the beneficiaries were present in court and expressed no objection to the order for rectification being granted.
6. Upon perusing the courts record I do note that when the petitioners initially moved the court, they filed Form P&A5 sworn on 24th June 2020 listing the inventory of the all assets and liabilities of the deceased at the time of his death. Notably, **Property LR No. 12431/403 known as LR No 209/440** was not included in that inventory. Subsequently, in

the Summons for Confirmation of Grant dated 22nd November 2021, the said Property LR No. 12431/403 known as LR No 209/440 was included as part of the deceased's estate for distribution. At this point, leave was not sought to include the said property as part of the deceased estate nor was any evidence provided to demonstrate that the property belonged to the deceased.

7. The petitioners now seek to correct the title number based on the copy of title provided. While the title which was issued in 1964 has been provided the applicants have not furnished a current search or evidence confirming that the parcel of land still forms part of the deceased's property. In the circumstance I am unable to grant the orders sought at this juncture. Parties are advised to provide an official search to confirm both ownership and correct title number.

Orders accordingly

Dated, signed and delivered at Machakos this 13th day of November, 2025

RHODA RUTTO
JUDGE

In the presence of;

.....Administrators

Selina Court Assistant

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