



**In re Estate of M’Ntabari Nkune alias Ntabari Nkune (Deceased) (Miscellaneous Succession Cause 17 of 2016) [2026] KEHC 995 (KLR) (3 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 995 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE 17 OF 2016**

**RL KORIR, J**

**FEBRUARY 3, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE**

**M N ALIAS N N**

**(DECEASED)**

**BETWEEN**

**PETER KINYUA JACKSON ..... APPLICANT**

**AND**

**MARK MURITHI MUTEGI ..... RESPONDENT**

**RULING**

1. The litigation of this matter has been winding and what would have otherwise been straight forward issues have been clouded in multiple applications.
2. The estate of the deceased M N alias N N was distributed by this court Limo J. vide a confirmed grant issued on 6<sup>th</sup> October 2017.
3. On 15<sup>th</sup> March 2023, M M M (Applicant), one of the beneficiaries named in the grant and allocated 0.56 acre jointly with L M M filed summons for revocation of grant. His complaint was that the LR. KARINGANI/MUIRU/4779 ought to have been given to him alone as he was the only surviving child of J M (son of the deceased).
4. The Summons came up for directions on 4<sup>th</sup> July 2023 when the Respondent being P K J (the administrator) and seven other Respondents were directed to file a response. On 16<sup>th</sup> August 2023, M K for and on behalf of the estate of B G, P M N of the estate of N, A K M, J M J, E K for and on behalf of the estate of G N, D M N, D M N and J M R for and on behalf of the estate of R N all filed a replying affidavits dated 9<sup>th</sup> August 2023. They supported the Application stating that L M ought to inherit from his father J M J and not share with the Applicant, M M M.



5. KJ the 1<sup>st</sup> Respondent and administrator filed a replying affidavit dated 3<sup>rd</sup> October 2023 and filed on even date. He opposed the Application for revocation stating that the Applicant M M M and L M M were the sons of J M and ought to share the portion as indicated in the confirmed grant.
6. On 4<sup>th</sup> October 2023 before the scheduled mention date of 5<sup>th</sup> October 2023, an application dated 3<sup>rd</sup> October 2023 was filed by L M M one of the beneficiaries seeking to be enjoined as an Interested Party. Directions were given on the Application on 2<sup>nd</sup> November 2023 for the Application to be canvassed by way of written submissions.
7. When parties appeared on 13<sup>th</sup> February 2024, they sought an order for DNA between L M M and M M M to confirm whether M M M had any blood relation with the deceased.
8. The DNA results were availed to the court on 5<sup>th</sup> November 2024.
9. On 2<sup>nd</sup> April 2025, Ms. Mwikali who appeared holding brief for Mr. M sought time to file a further affidavit. She sought directions that the Application dated 7<sup>th</sup> November 2024 be canvassed through written submissions.
10. From the record, it is not clear why parties opted to prosecute this later application and not the Applications dated 15<sup>th</sup> March 2023 and 3<sup>rd</sup> October 2023 which were left hanging.
11. Presently, for determination is the Application dated 7<sup>th</sup> November 2024 filed by P K J (the Administrator) seeking the following orders: -
  - i. That the grant of letters of administration intestate issued on 29<sup>th</sup> August 2016 and the certificate of confirmation of grant made on 4<sup>th</sup> October and issued on 6<sup>th</sup> October be rectified by deleting the name of M M M as a beneficiary.
  - ii. That costs be borne out of the estate.
12. The Application is founded on the grounds on its face and on the supporting affidavit of P K J (the Applicant) sworn on even date. He stated that grant of letters of administration were issued on 29<sup>th</sup> August 2016 and confirmed on 4<sup>th</sup> October 2017. That from the certificate of confirmation of grant there is an error on the record as M M M is included as a beneficiary.
13. He stated that on 16<sup>th</sup> March 2023, he filed for revocation of the grant dated 15<sup>th</sup> March 2023 on account he was not present during the confirmation of the grant yet he was the only surviving child of his late father Justus M. Further, on 3<sup>rd</sup> October 2023, L M M filed an application seeking to be joined in the proceedings as an interested party.
14. It was his statement that the court ordered that M M M and L M M undergo a DNA test at KEMRI with a member of the family which they underwent and the results were that the Respondent is not a member of the deceased's family thus not entitled to a stake in the deceased's estate.
15. The Respondent filed a replying affidavit 29<sup>th</sup> November 2024 stating that when he was about the age of ten to fifteen years, he found himself in the homestead of J M N and he did not inquire whether he was his biological father but he lived with him and his mother believing they were his biological parents.
16. He stated that his parents died when he was about 25 years old. That the deceased Jackson Ntabari, had before his death, shown him (Respondent) part of L.R Karingani/Muiru/318 presumably as his inheritance.



17. It was his statement that upon the death of Jackson Ntabari, during the processing of letters of administration, he was named as a beneficiary in his capacity as a grandson in the introduction letter by the chief.
18. He further stated that when B G initially petitioned for letters of administration, the Land Parcel L.R Karigani/Muiru/318 had been subdivided but titles had not been generated. That after the death of the B G, P K took over and applied for change of administration and a confirmed grant was issued to him (P K) on 21<sup>st</sup> April 2017 which confirmed that L M and M M M were to share 0.56 acres. Further, that according to the introduction letter L M was not named as a beneficiary and as such there was no basis to include him as beneficiary. That therefore the Respondent was entitled to file summons for revocation of grant to have the said L M removed from the 0.56 acres that he (M) was entitled to.
19. He also averred that he was entitled to a share of the estate by dint of Section 3 of the Law of Succession Act and therefore there was no need to rectify the grant for distribution on the basis of paternity.
20. The Application was canvassed by way of written submissions. The Applicant filed written submissions dated 10<sup>th</sup> April 2025 framing the following issues for determination: -
  - i. Whether this court has jurisdiction to entertain the Application for rectification.
  - ii. Whether the inclusion of M M M in the grant was erroneous.
  - iii. Whether the summons for rectification of grant are subjudice.
  - iv. Whether the summons for revocation and/or annulment of grant should be upheld.
21. The Respondent filed written submissions dated 2<sup>nd</sup> May 2025 raising the following issues for determination: -
  - i. Whether the Applicant has invoked the correct provision of the Law of Succession Act by seeking for rectification of grant under Section 74 of the Act.
  - ii. Whether the Respondent should be removed from this cause as a beneficiary of the estate of deceased despite the Respondent not being a biological child of the deceased.
  - iii. Whether the instant application is sub judice viz a viz the Respondent summons for revocation dated 15<sup>th</sup> March 2023.
  - iv. Who should pay for costs.
22. From the pleadings and submissions, the following issues arise for my determination: -
  - i. Whether this court has jurisdiction to entertain the summons for rectification as framed by the Applicant. of the Law of Succession Act.
  - iv. Whether the Respondent is entitled to inheritance despite lack of biological relationship to the deceased.
  - iii. Whether the Application is sub judice.
  - ii. Whether the inclusion of the Respondent was an error capable of rectification under Section 74
23. Jurisdiction for rectification is provided under Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules. The section empowers the court to rectify errors that relate to names, descriptions, or clerical mistakes in grants.



24. Section 74 of the *Law of Succession Act* 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.”

25. Rules 43 (1) of the Probate and Administration Rules provide further: -

“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 may apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

26. The Applicant submitted that the rectification sought meets the threshold set out under Section 74 as it concerns the erroneous inclusion of an individual as a beneficiary who has since been shown through DNA evidence and lack of legal or customary recognition not to be a lawful heir to the deceased’s estate. He placed his reliance on the case of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] eKLR where the court held that Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules provide for rectification of grant by the court where errors relate to names, descriptions, or setting out of time or place of deceased’s death thus this power is not general.

27. On his part, the Respondent submitted that Section 74 cannot be invoked to remove a dependent as removal of an individual as a beneficiary is not part of the exhaustive instances that can be rectified under the Section. He submitted that his removal goes to the root of distribution of the estate thus affecting the ratio decidendi in the certificate of confirmation of grant made to the Petitioner which were challenged through summons of revocation of grant dated 15<sup>th</sup> March 2023 and is pending hearing and determination.

28. The Respondent relied on the case of In Re Estate of Kwaria Marete (Deceased) [2018] eKLR where the court stated that the scope of Section 74 of the *Law of Succession Act* is quite limited and not intended to re-open the Cause as would an application for annulment or revocation of grant; and therefore does not cover matters which are contentious like removal or addition of a beneficiary from or to a confirmed grant or addition of estate property or redistribution. He also cited In Re Estate of Halson Mwangi Kahero [2013] eKLR where Musyoka J. stated as follows: -

“An error is essentially a mistake. For 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 name or in the description of a thing an “error” it would be an error if say such 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 full description of a thing or property is omitted it would be stretching the meaning of the word “error” too far to say that would amount to the error or mistake envisaged in Section 74 and Rule 43.”

29. Having considered the arguments and authorities, it is clear that the jurisdiction under Section 74 is intentionally narrow, designed to correct clerical, typographical, or factual misdescriptions that do not alter the substance of the grant. The case law reviewed has emphasized that rectification cannot be used to conduct redistribution, introduce or expunge beneficiaries, or resolve contentious factual disputes.



30. The question therefore is whether the erroneous inclusion of a person as a beneficiary, based on a now disproved assumption of familial relationship, constitutes a rectifiable misdescription under Section 74, or whether it amounts to a substantive dispute that can only be resolved under Section 76 through revocation.
31. The error alleged by the Applicant that the Respondent was mistakenly included as a grandson owing to an inaccurate assumption of paternity does indeed concern a misdescription of a person. However, the effect of removing the Respondent from the grant is not merely clerical. It directly alters the distribution, affects beneficial entitlements, and carries implications for the confirmed grant.
32. Such a consequence places the matter beyond the ambit of Section 74 as defined in the cases of Kwaria Marete and Halson Mwangi Kahero (*supra*), which correctly state the legal position that rectification cannot be used to remove a beneficiary or revise the substance of a grant.
33. It is my finding therefore, that while the inclusion of the Respondent may have been factually erroneous, the nature of the correction required is not clerical, nor is it limited to “names and descriptions” in the narrow sense contemplated by Section 74. It goes to the root of entitlement and the confirmed distribution, matters which can only be addressed through revocation or annulment under Section 76 of the *Law of Succession Act*, not rectification.
34. Consequently, I hold that Section 74 and Rule 43(1) do not confer jurisdiction to remove the Respondent as a beneficiary in the manner sought. In so finding, I associate myself with the holding of Mabeya J. in *in re Estate of M’Mwirichia (Deceased)* [2019] KEHC 7240 (KLR) where he rendered himself as follows: -

“In view of the foregoing, rectification under section 74 of the Act and Rule 43 of the Rules is only limited to errors in respect of names, descriptions or in the setting out the time or place of deceased’s death. Any ground for rectification has to be by way of review which will be based on discovery of new and important matter or on account of some mistake or error apparent on the face of the record or for any sufficient reason.”
35. Given that the court lacks jurisdiction under Section 74 to grant the orders sought, it follows that there is no logical basis to determine the remaining issues framed by the parties. All other issues, including whether the inclusion of the Respondent was erroneous and whether the application is sub judice are therefore moot and do not arise for determination in this Application. To the mind of the court, these are issues which properly belong to the pending Applications that parties have so far not prosecuted.
36. Accordingly, the Application is struck out. Each party shall bear their costs.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2026.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of Mr. Murimi M for the Applicant/Interested Party, Mr. I.C Mugo for the Respondent. Muriuki (Court Assistant).

