

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO. 60 2016
IN THE MATTER OF THE ESTATE OF M'NGERETHA
M'MUNYUA alias JOSEPH NGERE MUNYUA
(DECEASED)

JULIESTA KANINI NJERU.....1ST ADMINISTRATIX

CIAMBURA NGERE MUNYUA.....2ND ADMNINISTRATIX

ELLYJOY GATAKAA M'MUNYUA.....APPLICANT

RULING

1. For determination is the Application dated 18th March 2025 seeking the following orders: -
 - i. Spent
 - ii. That this honourable court be pleased to further rectify the rectified Certificate of confirmation of grant issued on 9th November 2022 by deleting the name JOYCE GATAKAA NGERE on the said

Certificate for Rectification of confirmed grant and substituting thereof with the Applicant's/ Interested Party's correct name ELLJOY GATAKAA M'MUNYUA as appearing on the Applicant's/ Interested Party's National identity card No. 21681881.

iii. That the cost of this Application be in the cause.

2. The Application is premised on the grounds on its face and on the supporting affidavit of Ellyjoy Gatakaa M'Munyua, the Applicant deposed on even date. She deposed that she was one of the beneficiaries in respect of the deceased's estate Original LR. Karingani/Ndagani/3946 and her interest is described as LR. Karigani/Ndagani/13421 after subdivision.

3. She stated that during generation of the Certificate for Confirmation of Grant issued, she was erroneously referred to as Joyce Gatakaa Ngere

instead of Ellyjoy Gatakaa M'Munyua her official name as per her National Identity Card. That the names Ngere and M'Munyua as appearing on the rectified certificate for confirmation of grant issued on 9th November 2022 and her National Identity Card No. 21681881 respectively refer to her deceased father.

4. She further stated that she is unable to process the title deed in respect of her portion of land LR. Karingani/Ndagani/134211 on account of her name as erroneously indicated on the rectified certificate for confirmation of grant. Further, that all the beneficiaries of the estate of the deceased have no objection to the Application.

5. The Application was unopposed. For added caution however the court required the attendance of other family members (beneficiaries) to confirm the position. Some of the beneficiaries attended court on

5th November 2025 and confirmed that the portion of land in question belonged to the Applicant and also confirmed her names.

Analysis and determination

6. Sections 107, 108 and 109 of the Evidence Act places the burden of proof on a person who wishes the court to grant judgement or orders in their favour. Such a person must proof any fact they wish the court to believe

7. Although the Application is unopposed, I am persuaded by the reasoning in the case of **Gichinga Kibutha -v- Caroline Nduku (2018) eKLR** the Kemei J. held that: _

“It is not automatic that instances where the evidence is not controverted the Claimant shall have his way in Court. He must discharge the burden of proof. He must proof

his case however much the opponent has not made a presence in the contest.”

8. The power of this court to order 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.

9. 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.”

10. 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.”

11. **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.”

12. It is clear that the power under Section 74 is intentionally narrow, designed to correct clerical, typographical, or factual misdescriptions that do not alter the substance of the grant. Rectification cannot

be used to conduct redistribution, introduce or expunge beneficiaries, or resolve contentious factual disputes.

13. In the present case, the Applicant must demonstrate that: -

- i. She is indeed a beneficiary of the estate;
- ii. Her name was erroneously reflected in the Rectified Certificate of Confirmation of Grant; and
- iii. The error is one that falls within the scope of rectification permissible by law.

14. I have carefully perused the court record. The Affidavit in Support of the Summons for Confirmation of Grant dated 5th July 2017 clearly lists the Applicant as **Ellyjoy Gatakaa M'Munyua**, described as a daughter of the deceased. The schedule of

distribution therein indicates that she was allocated a specific portion of the estate.

15. However, upon issuance of the Rectified Certificate of Confirmation of Grant on 9th November 2022, the name “Joyce Gatakaa Ngere” appeared in the place corresponding to the share allocated to the Applicant. Notably, the name “Ellyjoy Gatakaa M’Munyua” does not appear in the said certificate.

16. I am satisfied, upon comparing the affidavit in support of confirmation and the certificate issued, that the variance is not indicative of a new beneficiary but rather a clerical or typographical error in the rendering of the Applicant’s name.

17. The power of this Court to rectify grants is anchored in Section 74 of the Law of Succession Act, Cap 160, which provides that 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, may be rectified by the Court. Rule 43 of the Probate and Administration Rules further operationalizes this provision by allowing an Application for rectification where there are errors in names or descriptions.

18. The error in the present case falls squarely within the ambit of Section 74. It concerns the incorrect description of a beneficiary's name in the Certificate of Confirmation of Grant. It does not alter the substance of the distribution, nor does it introduce a new beneficiary or vary the shares allocated. It merely seeks to align the Certificate with the true and correct identity of the beneficiary as originally disclosed to the Court.

19. The Applicant has annexed her National Identity Card No. 21681881 showing her name as Ellyjoy Gatakaa M'Munyua. I am convinced that she is the same person who was listed in the affidavit in

support of confirmation dated 5th July 2017 and allocated the subject parcel.

20. Further, the Application is unopposed and the other beneficiaries have expressly confirmed that the land in question belongs to the Applicant. There is therefore no dispute as to entitlement, and no prejudice will be occasioned to any party by granting the orders sought.

21. Consequently, the I allow the Application dated 18th March 2025 and order that the Rectified Certificate of Confirmation of Grant issued on 9th November 2022 is hereby further rectified by deleting the name **JOYCE GATAKAA NGERE** and substituting therefore the name **ELLJOY GATAKAA M'MUNYUA**, being the correct name of the beneficiary as per National Identity Card No. 21681881.

22. No orders as to costs.

**Ruling delivered, dated and signed at Chuka this
5th day of March, 2026.**

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R. LAGAT-KORIR

JUDGE

**Ruling delivered in the presence of Ms Mutegi
holding brief for Ms Mbumbuya for the Applicant.
Muriuki (Court Assistant).**