

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 29 OF 2019**  
**IN THE MATTER OF THE ESTATE OF MBOTE GITHINJI**  
**SOLOMON (DECEASED)**

**GITHINJI KANGETHE MBOTE ..... 1<sup>ST</sup>**  
**PETITIONER**

**MARIGI NGUITUI MBOTE ..... 2<sup>ND</sup>**  
**PETITIONER**

**DORCAS WANJIRU MBOTE ..... 3<sup>RD</sup>**  
**PETITIONER**

**ALICE NYAMBURA MBOTE ..... 4<sup>TH</sup>**  
**PETITIONER**

**RULING**

1. Before this court for determination is a Summons to amend confirmed letters of administration intestate dated 2<sup>nd</sup> October 2024 which seeks the following orders;
  - a) That the Grant of Letters of Administration made on 13th November 2019 to Githinji Kang’ete Mbote, Marigi Nguitui Mbote, Dorcas Wanjiru Mbote & Alice Nyambura Mbote and confirmed be amended as by the list of properties mentioned in their supporting affidavit herewith attached.
  - b) That costs of this application be on the cause.
2. The Applicant’s application is premised on the grounds set out on the face of the application and in the supporting affidavit

sworn by the 1<sup>st</sup> and 4<sup>th</sup> Petitioner. The crux of the application is that a grant of probate of the last will dated 19<sup>th</sup> December 2014 of the deceased was made to Githinji Kang'ete Mbote, Marigi Nguitui Mbote, Dorcas Wanjiru Mbote & Alice Nyambura Mbote in the matter at the High Court at Machakos on 13<sup>th</sup> November 2019 and that after the grant was confirmed, the petitioners discovered that several properties purchased by several individuals who are beneficiaries of the estate were omitted and have not been transferred into their names following the death of the deceased. That the properties were pending transfer from the deceased to the beneficiaries and when the deceased died, the administrators/executors had no information of the properties hence the properties were left out in the distribution of the deceased's estate. They aver that some other properties which were pending distribution to the beneficiaries have been distributed as indicated in the schedule of distribution and that the identification and shares of persons, beneficiaries entitled to the estate including part of that estate which was omitted in the will has been ascertained, determined and amended. They averred that there is no application for provision for dependants is pending anywhere and no estate duty is payable in the deceased's estate.

3. When the matter came up for hearing on 16<sup>th</sup> October 2025, all the beneficiaries were present in court and they all

confirmed to court that they are not objecting to the proposed mode of distribution.

### **Analysis and Determination**

4. I have carefully considered the summons application herein, the affidavit in support and the confirmation by the beneficiaries in court orally and there is one issue for determination that is, **whether the summons for rectification of grant is merited.**
5. To begin with, I must note that pursuant to the orders of this court issued on 17<sup>th</sup> March 2025, this matter was re-opened after the earlier orders of 4<sup>th</sup> May 2023 closing the file were set aside. The present application therefore properly falls for determination on its merits.
6. The Applicants seek amendment of a confirmed grant so as to include certain properties said to have been omitted from the schedule of distribution at the time of confirmation. Their explanation is that the said properties were pending transfer from the deceased to individual beneficiaries at the time of death, and that the administrators had no knowledge of them during confirmation proceedings. It is also not in dispute that when the matter came up for hearing, all beneficiaries were present in court and expressly confirmed that they had no objection to the proposed amendment and mode of distribution.

7. The legal framework governing rectification or amendment of grants is found in Section 74 of the Law of Succession Act, Cap 160 Laws of Kenya, and Rule 43 of the Probate and Administration Rules. Section 74 provides that;

**74. Errors may be rectified by court**

**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.**

8. **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.”**

9. Summarily, Section 74 provides that 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. The jurisprudence emerging from the High Court has consistently held that the power donated under Section 74 is circumscribed and does not extend to substantive alteration of a confirmed grant or redistribution of an estate. Rectification is intended to correct clerical or typographical errors and minor inaccuracies not to reopen or fundamentally alter the mode of distribution.
11. The courts have further held that where an applicant seeks to introduce new assets or substantially alter the distribution of the estate after confirmation, such changes fall outside the ambit of Section 74. In such circumstances, the appropriate remedies may include review of the confirmation orders or revocation of grant under Section 76 of the Act, depending on the facts of the case. For example;
- a. In **In Re Estate Richard Wahome Kagathi (Deceased) [2011] KEHC 3382 (KLR)**, the court stated that;
- “The Petitioner has now come before this court seeking to amend the petition. I think the application is improper and inappropriate in the circumstances of this case. The application can only be sought where the grant has not been issued which is not the case here. It is worse in this cause in that the grant has already been confirmed. In a nutshell the petition cannot be revisited because the same has been concluded. I equate the Petitioner’s application to a civil suit which has been heard and determined giving**

rise to a judgment. In such a case one does not expect the Plaintiff to go back to court to apply for the Plaintiff to be amended, because the suit no longer existed. If I understood the Petitioner well, her problem is that she has administered the Estate leaving out certain properties unadministered. If well advised, not all is lost for the Applicant, because she should be able to invoke the relevant provisions of the law governing unadministered assets of an estate.”

- b. 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....”

Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the Law of Succession Act, the applicant ought to approach the court under order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil

**Procedure Rules may be sought upon 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. The applicant in this case should have moved the court under this Provision-Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”**

c. In **In re Estate of Gathi Mwathe (Deceased) (Succession Cause 151 of 2007) [2025] KEHC 13939 (KLR) (6 October 2025) (Ruling)**, the court held;

**“6..... A rectification seeking to include properties which were not in the schedule of the assets when filing the cause and not included in the grant may not fit in the matters provided under Section 74 of the Act.”**

12. This court must therefore interrogate the nature of the amendment sought to determine whether it is a permissible rectification or an impermissible substantive alteration based on the circumstance of the case.

13. In the present case, the Applicants do not merely seek correction of typographical errors in the grant. Rather, they seek inclusion of additional properties that were not listed in the schedule of distribution at the time the grant was

confirmed. On the face of it, inclusion of omitted assets would ordinarily amount to a substantive amendment as it enlarges the estate and potentially affects distribution. However, this matter presents a unique factual matrix.

14. First, the Applicants have deponed that the properties in question had already been purchased and allocated to specific beneficiaries by the deceased prior to his demise and were merely pending formal transfer. Secondly, the beneficiaries who stand to benefit from the inclusion have expressly confirmed, in open court, that they consent to the proposed mode of distribution and raise no objection. Thirdly, there is no pending application for reasonable provision by any dependant nor is there any contest as to entitlement. Moreover, on 17<sup>th</sup> March 2025, by the orders of this court, the order issued on 4<sup>th</sup> May 2023 closing the file was set aside.
15. While this court remains mindful of the limited scope of Section 74 as articulated in previous decisions, the peculiar and uncontested circumstances of this case justify a measured departure from a rigid application of that principle. The amendment sought does not reopen distribution, alter beneficial interests or prejudice any party. Rather, it facilitates completion of administration and gives effect to the true composition of the estate.
16. Having in mind the overriding objective in succession matters being to ensure the just, expeditious, proportionate and affordable resolution of disputes relating to estates, the

probate court retains inherent jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of its process.

17. Accordingly, I find that the summons dated 2<sup>nd</sup> October 2024 is merited. The confirmed grant issued on 13<sup>th</sup> November 2019 is hereby amended to include the additional properties as set out in the supporting affidavit and schedule annexed thereto. The amended schedule of distribution shall form part of the confirmed grant.

Orders accordingly.

Dated, signed and delivered at Machakos this 19<sup>th</sup> day of March, 2026

**RHODA RUTTO**  
**JUDGE**

**In the presence of;**

.....Applicant

.....Respondent

Selina Court Assistant

Original