

**0 REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**SUCCESSION CAUSE NO.E027 OF 2023**

**IN THE MATTER OF ESTATE OF THE LATE JOHN MWAURA NJAU**

**(DECEASED)**

**RULING**

1. What is before the court is the **Summons for Rectification of Grant** dated **30<sup>th</sup> July, 2025**, seeking the following orders:-

*a) THAT the GRANT of letters of Administration issued to NDIRANGU MWAURA, DAVID MUNGAI MWAURA and NAOMI NDUTA MWAURA as Co-administrators in this matter on the 9<sup>th</sup> October, 2023 be rectified in the following respects as provided for by Rule 43 (1) of the Probate and Administration Rules i.e;*

*i) THAT the name of NDIRANGU MWAURA who is recently deceased having passed away on 20<sup>th</sup> January, 2024 be deleted from among the named Administrators in the instant Petition for Letters of Administration Intestate.*

*ii) THAT the name of PETER MWAURA NDIRANGU be inserted as a beneficiary in the Estate of his late*

*grandfather JOHN MWAURA NJAU in place of the name of his late father to appear together with his uncles and aunties mentioned in the Petition for Letters of Administration herein.*

*iii) THAT the costs of this application shall be in the cause.*

2. The Summons is supported by the Affidavit of **David Mungai Mwaura and Naomi Nduta Mwaura** on 30<sup>th</sup> July, 2025, wherein they have stated that they hold that they were issued with the Grant of Letters of Administration in the Estate of the Deceased jointly with **Ndirangu Mwaura** who died on 20<sup>th</sup> January, 2024. That, they now seek to have his name deleted and replaced with that of his son **Peter Mwaura Ndirangu** and thus seek to have the **Grant of Letters of Administration Intestate** rectified to reflect the same.

### **Analysis and Determination**

3. To determine the **Summons for Rectification of Grant**, I have read through the grounds upon which the same is premised both on its face and Supporting Affidavit in support thereof and perused the annexures attached thereto, I find the issue for determination being whether the Applicant has satisfied the threshold set out for Rectification of Grant to be allowed.

4. The law that governs the process on **Rectification of Grant** is provided for under **Section 74 of the Law of Succession, Cap 160 of the Laws of Kenya and Rule 43(1) of the Probate and Administration Rules**. Section 74 of the Law of Succession provides that:-

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

*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.*

5. Rule 43(1) of the Probate and Administration Rules provides as follows:-

**[43]. Rectification of grant**

*(1)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.*

6. From the above provision of law, the scope of Rectification of Grant is

limited to the correction of clerical mis-description of a property, or to a name which has not been fully or properly described in the Grant of Representation or any other minor error or a mistake on the face of the record that would not have far reaching consequences in the Grant. This application can be made before or after Confirmation. It cannot be made in respect of changing the substance of Grant such as changing the Administrators or beneficiaries of or Mode of Distribution of assets. In circumstances the rectification is not in respect to correction of name or property but in substitution of one administrator of the Estate.

7. In the instant case, the Applicants seek for a change in the **Grant of Letters of Administration Intestate** issued on 9<sup>th</sup> October, 2023 by removing the name of one of the Administrators, being, **Ndirangu Mwaura** who is said to be deceased, by removing his name and replacing him with his son, **Peter mwaura Ndirangu**. This in essence would amount to substitution of one of the Administrators of the Estate of the Deceased. It is not a correction of a name or property.

8. However, the question that arises for this Court is what happens upon the death of one of the Administrators? The answer was expressed in the case

of Re Estate of Elijah Oktah Mikah Tsimbwele (Deceased) [2021] eKLR, where the Hon. Justice Musyoka stated that:-

*“The death of one or more administrators does not affect the grant, in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them.”*

9. Similarly in the case of Re Estate of Korir arap Malakwen - (Deceased) (Succession Cause 459 of 2014) [2024] KEHC 10913 (KLR) (20 September 2024) (Ruling) the Court held that:-

*“Section 81 of the Act is that, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones. That Section provides thus:*

*“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them...”*

10. It is worth noting that the law does not allow for substitution of a Deceased Administrator even in a case of a Sole Administrator. This is because the grant of representation acts in *personam* and not in *rem* and is thus not

transferrable . See **John Karumwa Maina –vs- Susan Wanjiru Mwangi**  
[2015] eKLR the Court held:-

*“In the case of Florence Okutu Nandwa & another v John Atemba Kojwa, Court of Appeal Civil Appeal in Civil Appeal No 306 of 1998 at Kisumu where it was held that a court should not issue a grant to a person who has not sought for it. The judge stated as follows:-“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another.”*

11. Given the above-stated circumstances, the Court declines to grant the orders sought in the **Summons for Rectification** dated 30<sup>th</sup> July, 2025 and proceeds to dismiss the same with no orders as to costs.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU**  
**THIS 23<sup>RD</sup> DAY OF MARCH, 2026.**

**D. O. CHEPKWONY**  
**JUDGE**