

IN THE REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO. 9 OF 1977

IN THE MATTER OF THE ESTATE OF HASSANALI ABDUL HUSSEIN -
DECEASED

THROUGH

HUSSEIN INAYAT 1ST
PETITIONER/APPLICANT

HASSAN ALI SALIM 2ND
PETITIONER/APPLICANT

ZAHIR AMIRALI HASSAN ALI DARUGAR 3RD
PETITIONER/APPLICANT

Coram: Hon. Justice R. Nyakundi

M/S Lutta Antonina & Company Advocates

RULING

1. Before court are summons for rectification of grant dated 19th March 2026 in which the Petitioners are seeking for orders:
 - (a) That the application be certified urgent, service be dispensed with and same heard exparte in the first instance.
 - (b) That the Honorable Court be pleased to rectify and/or update the Certificate of Confirmation of Grant of all the Estate of Hassan Ali Abdul Hussein (Deceased) confirmed on the 26th day of February 2026 to reflect the current title number of the estate property.
 - (c) That Costs for this application be in the cause.
2. Which application is grounded upon the following grounds:

(a) That the honorable court confirmed the certificate of grant of all the estate of Hassan Ali Abdul Hussein (Deceased) on the 26th day of February 2026, which at the time correctly reflected the title number of one of the estate properties as "Eldoret Municipality/Block 8/74."

(b) That it has since come to the attention of the Petitioners/Applicants that the said property has been assigned a new title number and now subsists as "Eldoret Municipality/Block 8/838."

(c) That the continued reference to the old title number "Eldoret Municipality/Block 8/74" in the certificate of confirmation of grant may hamper the final stages of distributing the Estate assets and/or cause difficulties in the registration of title in favour of the beneficiaries of the estate.

(d) That it is only fair and in the interest of justice that the certificate of confirmation of grant be updated to reflect the current title number "Eldoret Municipality/Block 8/838".

(e) That the instant application has been taken out expeditiously without undue delay upon discovery of the change in title number.

3. The application is supported by an affidavit sworn by the Applicants' Advocate practicing in the name of M/S Lutta Antonina & Company Advocates who deposed as follows:

(a) That the Petitioners are my clients and we have been on record on their behalf.

(b) That the Honourable Court confirmed the Certificate of Grant of ALL the Estate of Hassanali Abdul Hussein (Deceased) on the 26th day of February 2026, which at the time correctly reflected the title number of one of the Estate properties as "Eldoret Municipality/Block 8/74".

- (c) That it has since come to the attention of the Petitioners/Applicants that the said property has been assigned a new title number pursuant to a fresh registration and now subsists under the title number "Eldoret Municipality/Block 8/838", the former title number having been superseded.
- (d) That the continued reference to the old title number in the Certificate of Confirmation of Grant may hamper the final stages of distributing the Estate Assets to the bonafide beneficiaries and/or may cause difficulties in the registration of title in the names of the beneficiaries.
- (e) That it is only fair and in the interest of justice that the certificate of confirmation of grant be updated to reflect the current and subsisting title number Eldoret Municipality/Block 8/838.
- (f) That I make and swear this affidavit in support of the instant application hereon.

Decision

4. This matter before court is at the tail end, a certificate of confirmation of grant has been duly issued dated 26th February 2026. The gist of it is the interpretation and giving effect to the provision of Section 71(1) of the Law of Succession Act on confirmation and distribution of the intestate estate to the beneficiaries. This is also in line with Section 29 of the Laws of Succession Act on the legitimate dependence to the estate and must be read with Section 3 on what constitutes the net estate of the deceased.
5. In so far as the instant summons is concerned, the point of remedy being sought is as defined under Section 74 and Rule 43 (1) of the Probate and Administration Rules on rectification of grant of letters of administration. This is about minor mistakes, typos, errors on misdescription of names of assets and beneficiaries. This is not about changing the character of the original grant of letters of administration.

This remedy must be contradistinguished with amendments or review of grant of representation as provided for under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.

6. Rectification of letters of administration is a remedy meant to clarify issues without changing the substance of the grant as decreed by the court. The principles are now well settled in caselaw on rectification of grant of letters of administration as demonstrated by the following authorities:

In Re Estate of Moriongeni Kogo (Deceased) [2025] KEHC 13859

- **Issue:** Rectification of land acreage in a confirmed grant.
- **Holding:** The court allowed the rectification because the land on the title was slightly less than what was initially subdivided, which was considered a minor error or misdescription under Section 74.
- **Key Principle:** Rectification is appropriate for minor errors that do not reduce any beneficiary's actual entitlement but correct the record. Similarly, in **Re Estate of George Gichunju Gikaria (Deceased) (2021) KEHC 6528**
- **Issue:** Application to rectify the description of property and include a co-administrator.
- **Holding:** The court found the application partially meritorious, allowing the rectification of the property description but required a new, formal application to include the legal representative of a deceased co-administrator, as that constitutes a substantial change. Likewise, in **Re Estate of John Ngacha Ng'ang'a (Deceased) (2023) KEHC 19462**
- **Issue:** Application to include four new parcels of land omitted during the initial filing of the petition.
- **Holding:** The court dismissed the application for rectification.
- **Key Principle:** Omission of entire assets (as opposed to a misdescription of an included asset) is a substantial amendment, not a clerical error. Such matters require an application

for **Review** (under Order 45 of Civil Procedure Rules), not rectification under Section 74. Last but not least, in **Re Estate of Muniu Karugo (Deceased) - Nairobi High Court (1997)**

- **Issue:** Changing a sole administration grant to a joint grant.
- **Holding:** The court held that rectification can only deal with obvious errors (e.g., typographical errors) and cannot be used to fundamentally change the character of the grant. Finally, In **Re Estate of Jonah Kiprotich Arap Tuwei (Deceased) [2025] KEHC 8164**
- **Issue:** Amending a confirmed grant to correct the acreage of joint beneficiaries.
- **Holding:** The court reiterated that rectification is limited to Section 74 situations (names, descriptions, time/place of death). If the amendment does not meet these criteria, the applicant must proceed via **Order 44 of the Civil Procedure Rules** (Review).

7. Rectification is an equitable remedy used by courts to correct a written instrument such as a contract, deed, transfer, grant of letters of administration etc., that fails to accurately reflect the true, prior, agreement or intention of the parties. It is not a tool for rewriting a contract or in terms of Succession Law reviewing the grant of letters of confirmation but rather for correcting the document to reflect the actual agreement reached or terms of distribution in the final decree in succession matters.

8. I have reviewed the summons for rectification together with the affidavit in support and I hold the view that this is a proper case for rectification of the estate properties title deed to read Eldoret Municipality/Block 8/838 instead of Eldoret Municipality/Block 8/74 which was the initial description of the suit land. With this order the certificate of grant of confirmation dated 26th February 2026 shall be amended accordingly to reflect the rectification. It is so ordered.

**DELIVERED VIA E MAIL AND CTS AND SIGNED THIS 31ST DAY OF
MARCH, 2026**

.....

R. NYAKUNDI

JUDGE