

**KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CASE NO. E017 OF 2021**

**IN THE ESTATE OF THE LATE JOSEPH MAWA  
MUTHEMBWA ALIAS JOSEPH MAWA MTHEMBWA ALIAS  
MAWA MUTHEMBWA (DECEASED)**

**HENRY KYALO**

**MAWA .....APPLICANT**

**VERSUS**

**JENIFFER MUENI MAWA .....**

**RESPONDENT**

**RULING**

1. Before this court for determination is the Summons for rectification of confirmed grant dated 5<sup>th</sup> June 2025 accompanied by the affidavit sworn by the Applicant. The Applicant seeks that: -
  - a. Spent;
  - b. Spent;
  - c. That the Certificate of confirmation of grant issued to Henry Kyalo Mawa and Jeniffer Mueni Mawa in the matter on 22<sup>nd</sup> February 2024 be rectified in the following respect;
    - i. That the property known as Machakos/Konza North Block 1/232 be rectified and or corrected to be registered in the names of Henry Kyalo Mawa and Jeniffer Mueni Mawa to hold for themselves

and in trust for the other beneficiaries namely; Justus Mutava Mawa, Josephine Mwelu Mawa, Regina Mutheki Mawa, Dominic Sila Mawa and Joyce Mwongeli Mawa since it was wrongly allocated to be registered in the name of the Jeniffer Mueni Mawa alone.

- d. That the resultant registration of land parcel Machakos/Konza North Block 1/232 be deemed invalid and reverted to its original position; and
  - e. That the costs of the application be provided for.
2. The application is premised on the contention that the certificate of confirmation of grant contains errors in the distribution of parcel Machakos/Konza North Block 1/232 which was ordered to be registered solely in the name of Jenniffer Mueni Mawa, contrary to the alleged intention that all the properties be registered in the joint names of the administrators Henry Kyalo Mawa and Jennifer to hold in trust for themselves and the other beneficiaries namely Justus Mutava Mawa, Josephine Mwelu Mawa, Regina Mutheki Mawa, Dominic Sila Mawa and Joyce Mwongeli Mawa.
3. The Applicant avers that following confirmation of grant, the said parcel of land was transmitted and registered in the sole Jennifer Mueni Mawa and a Title Deed issued in her favour. He states that she has since threatened to dispose

off the property on the basis that it is registered solely in her name. According to the Applicant, there was no justification for allocating the land exclusively to one beneficiary, given that all beneficiaries are equal and were entitled to benefit equally from the estate. He explains that the anomaly was not detected at the time of confirmation, as beneficiaries believed that all properties were to be registered in the names of the administrators to hold in trust for all beneficiaries. The Applicant maintains that all beneficiaries have since consented to the rectification sought.

4. The Applicant also depones that although he attempted to register a caution against the property, the same was rejected on the ground that there was no order indicating that the land was held in trust. He therefore seeks protective orders to prohibit the County Land Registrar from registering any dealings in respect of the said land pending rectification, as there is a real risk that it may be disposed of by the Respondent.
5. The application is opposed by the Respondent through a reply affidavit sworn on 30<sup>th</sup> June 2025. She avers that Rule 43 (1) of the Probate and Administration Rules does not vest this Court with jurisdiction to redistribute the estate of a deceased person. She denies that the subject parcel of land was wrongly allocated to her and asserts that it was

distributed to her absolutely, without any obligation to hold it in trust for any other beneficiary.

6. The Respondent further contends that during the hearing of the summons for confirmation dated 9<sup>th</sup> May 2023 the applicant and all the other beneficiaries were present in court and expressly confirmed that she was entitled to the subject parcel of land to the exclusion of any other beneficiaries. She maintains that there was no fraud, misrepresentation or concealment of material facts, and that all beneficiaries freely consented to the mode of distribution adopted by the court on 22<sup>nd</sup> February 2024. She adds that following the confirmation of the grant, the Applicant duly executed all the relevant transmission documents under the Land Registration (General) Regulations 2017 leading to the vesting of the subject parcel in her name. It is her position therefore that the present application does not fall within the scope of either Rule 43 (1) of the Probate and Administration Rules or Section 74 of the Law of Succession Act.
7. The summons application was canvassed by written submissions.

### **Appellant's submissions**

8. The Applicant, an administrator of the estate of the late Joseph Mawa Muthembwa, seeks rectification of the confirmed grant issued on 22<sup>nd</sup> February 2024 on the

ground that it contains an error in the mode of distribution of land parcel MACHAKOS/KONZA NORTH BLOCK 1/232. It is contended that although the intention of the administrators and beneficiaries was that all estate properties be registered in the joint names of the administrators to hold in trust for all beneficiaries, the said parcel was, through an inadvertent error, registered solely in the name of Jeniffer Mueni Mawa. The Applicant attributes this error to a mistake made during the preparation of the summons for confirmation of grant and asserts that all beneficiaries, save for the Respondent, have consented to the proposed rectification.

9. The Applicant submits that this Honourable Court has jurisdiction to rectify the confirmed grant pursuant to Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules, which permits the correction of errors in names and descriptions. It is argued that the allocation of the suit property to one administrator alone constitutes an error in the description of the distribution capable of rectification and does not amount to a substantive redistribution of the estate. Reliance is placed on **In re Estate of Jonah Kiprotich arap Tuwei (Deceased) (Succession Cause 108 of 2019) [2025] KEHC 8164 (KLR)**, where the court allowed rectification of acreage after confirmation of grant and **In the Matter of**

**the Estate of Geoffrey Kinuthia Nyamweinga (Deceased) [2013] eKLR** which clarified that rectification may address errors apparent on the face of the record, including mistakes arising from inadvertent instructions to counsel.

10. On whether the resultant registration should be invalidated, the Applicant submits that the court retains wide jurisdiction under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to make such orders as may be necessary for the ends of justice, including cancellation of title deeds and issuance of injunctive relief. In this regard, reliance is placed on **Omollo Ongoro (Succession Cause 366 of 2001) [2023] KEHC 18999 (KLR)** and the Court of Appeal decision in **Floris Piezzo & Another v Giancarlo Falasconi [2014] eKLR**, which affirmed that a succession court has inherent jurisdiction to grant injunctive orders to preserve estate property.

11. The Applicant further argues that the Respondent cannot rely on the existence of a title deed to defeat the court's jurisdiction, particularly where the registration arose from an error or otherwise flawed succession process. Authorities cited include **Jacinta Wanja Kamau v Rosemary Wanjiru Wanyoike & Another [2013] eKLR**, **Jane Gachola Gathetha v Priscilla Nyamira Gitungu &**

**Another [2006] eKLR, and Re Estate of Christopher Aide Adela (Deceased) [2009] eKLR** which collectively establish that no valid interest can pass through irregular unlawful, or unauthorized dealings in estate property.

12. Emphasizing the principle of equality among beneficiaries in intestate succession, the Applicant submits that fairness and equity must guide the distribution of estate property. Reliance is placed on **In re Estate of Sawe Maina (Succession Cause 350 of 2015) [2023] KEHC 26928 (KLR)** where the court upheld a mode of distribution supported by the overwhelming majority of beneficiaries and underscored the importance of equitable sharing of estate property.
13. Finally, the Applicant disputes the Respondent's contention that the court is *functus officio* arguing that the High Court retains jurisdiction to revisit and correct its orders in appropriate circumstances. Reliance is placed on **Republic v Independent Electoral & Boundaries Commission & Another Ex parte Coalition for Reforms and Democracy (CORD) [2017] eKLR**, where the courts observed that justice must be grounded in the rule of law rather than rigid adherence to procedural finality.
14. In totality, the Applicant urges the court to allow the application.

### **Respondent's Submissions**

15. The Respondent opposes the Applicant's Summons maintaining that it is fundamentally misconceived in both law and procedure and that the Probate Court lacks jurisdiction to grant the orders sought. It is submitted that the issues raised, particularly those touching on ownership and title to land fall within the exclusive jurisdiction of the Environment and Land Court pursuant to Section 4(1) and Section 13(2)(a) of the Environment and Land Court Act, No. 19 of 2011. Reliance is placed on **In re Estate of Atibu Oronje Asioma (Deceased) Succession Cause No. 312 of 2008 (2022)**, where the court held that disputes relating to ownership of land fall outside the mandate of the probate court.

16. The Respondent further submits that no error exists in the grant or certificate of confirmation of grant that would warrant rectification under Section 74 of the Law of Succession Act. It is contended that the provision is limited to the correction of clerical or descriptive errors, such as mistakes in names, descriptions, or details relating to the deceased's death, and does not extend to substantive alterations in the mode of distribution. According to the Respondent, the Applicant is impermissibly seeking to reopen and alter the distribution of the estate under the guise of rectification.

17. The Respondent avers that the grant was confirmed on 22nd February 2024 in the presence of all beneficiaries and

that all parties including the Applicant expressly consented to the distribution of parcel number MACHAKOS/KONZA NORTH BLOCK 1/232 to her absolutely. She contends that there is no evidence on record to support the claim that the property was to be held in trust for other beneficiaries. To the contrary, the land was duly transmitted to her, and the Applicant voluntarily executed all requisite transmission documents leading to her registration as the absolute proprietor. She further points out that no allegations of fraud, illegality, or misrepresentation have been raised or proven and that none of the other beneficiaries have sworn affidavits contesting her entitlement to the property.

18. The Respondent also argues that the court is *functus officio*, having already confirmed the grant and determined the mode of distribution. Reliance is placed on **In Re Estate of Juma Shitseswa Linani (2021) eKLR**, where the court held that dissatisfaction with a confirmed grant does not justify reopening the matter through rectification or revocation and that the proper recourse lies in an appeal.

19. Further, reliance is placed on **In re Estate of Nathan Muchina Shosia (2025) KEHC 2571 (KLR)**, which reaffirmed that rectification under Section 74 is limited to minor, non-substantive errors and cannot be invoked to alter the substance of a confirmed grant.

20. In conclusion, the Respondent submits that the Applicant is improperly seeking to redistribute the estate and urges the court to dismiss the application with costs.

### **Analysis and Determination**

21. From the application and the respective positions taken by the parties, the issue arising for determination is whether the Certificate of Confirmation of Grant relating to the estate, particularly in respect of MACHAKOS/KONZA NORTH BLOCK 1/232, should be interfered with.

22. The starting point is the legal framework governing rectification of grants. Section 74 of the Law of Succession Act read together with Rule 43 of the Probate and Administration Rules, empowers the court is empowered to rectify errors in grants. That jurisdiction, however, is limited to correcting mistakes in names, descriptions, or other clerical mistakes. It does not extend to revisiting or altering the substance of a confirmed grant, particularly as regard the mode of distribution of the estate.

23. In the present case, the Applicant seeks, inter alia, orders removing MACHAKOS/KONZA NORTH BLOCK 1/232 from the sole name of the Respondent and having it registered jointly in the names of the administrators to hold in trust for all the beneficiaries. This court must therefore interrogate whether such an order falls within the limited scope of rectification as contemplated under Section 74 of

the Law of Succession Act and Rule 43 of the Probate and Administration Rules, or whether it amounts to a substantive alteration of the confirmed grant.

24. It is not in dispute that the Certificate of Confirmation of Grant issued on 22<sup>nd</sup> February 2024 expressly provided that the suit property be allocated to the Respondent. The Applicant does not allege that there was an error in the spelling of names, description of the property or any clerical mistake apparent on the face of the record. Rather, the grievance is that the property ought not to have been distributed solely to the Respondent but should instead have been vested jointly in the administrators in trust for all beneficiaries. That grievance goes to the very core of the distribution of the estate.

25. The law is settled that rectification under Section 74 is limited in scope and confined to minor non-substantive errors. It cannot be invoked as a mechanism to alter or redistribute the estate. **In re Estate of Nathan Muchina Shosia (2025) KEHC 2571 (KLR)**, the court reiterated that rectification cannot be used as a vehicle to alter the substance of a grant. Similarly, in **Re Estate of Charles Kibe Karanja (Deceased) [2015] eKLR** the court emphasized that any attempt to change the distribution reflected in a certificate of confirmation of grant must be pursued through review or appeal as such changes are fundamental and not clerical.

26. Applying the foregoing principles to the facts of this case, this court finds that the orders sought by the Applicant do not constitute rectification but rather a redistribution of the estate. The Applicant is effectively inviting the court to revisit and vary its earlier orders on confirmation. That is a jurisdiction the court cannot exercise within the confines of Section 74 of the Law of Succession Act.
27. The Applicant has urged the court to find that the inclusion of the Respondent as the sole beneficiary of the suit property was an inadvertent error. However, the record demonstrates that the confirmation proceedings were conducted in the presence of the beneficiaries. No evidence has been placed before the court to establish that the orders issued on 22<sup>nd</sup> February 2024 were made inadvertently, under a mistake, or without the knowledge or consent of the parties. On the contrary, the Respondent has deponed, and it has not been controverted by cogent evidence that the Applicant executed the necessary transmission documents to facilitate registration of the property in her name.
28. In light of the above, this court is persuaded that the proper recourse available to the Applicant, if aggrieved by the mode of distribution, lay in seeking review of the confirmation orders or lodging an appeal, rather than invoking rectification proceedings.

29. In the circumstance, the Summons for rectification of confirmed grant dated 5<sup>th</sup> June 2025 is devoid of merit and is hereby dismissed. Given the nature of the dispute which involves family members, each party shall bear their own costs.

Orders accordingly.

Dated, signed and delivered at Machakos this 7<sup>th</sup> day of May, 2026

**RHODA RUTTO**  
**JUDGE**

**In the presence of;**

.....Applicant

.....Respondent

Selina Court Assistant