



REPUBLIC OF KENYA



**In re Estate of Levy Victor Wakaba (Deceased) (Succession Cause E3509 of 2022)
[2025] KEHC 2523 (KLR) (Family) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2523 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E3509 OF 2022
EKO OGOLA, J
FEBRUARY 27, 2025**

IN THE MATTER OF

ESTHER WARAU KIBATA 1ST APPLICANT

EUNICE WANJIKU WAIRIUKO 2ND APPLICANT

RULING

1. The Summons for rectification of grant is dated 30th January 2025. The applicants pray that the Certificate of Confirmation of Grant dated 31st July 2023 be rectified to include the deceased insurance policy cover with Lloyd Masika Limited Staff Pension Fund-Minet Kenya Ltd Policy Number M00XXXX76 to be distributed to Esther Warau Kibata absolutely.
2. Rectification of grants is provided for in Section 74 of the *Law of Succession Act*, and Rule 43(1) of the Probate and Administration Rules. Section 74 provides as follows:

“74. Errors may be rectified by court:

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, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

3. Rule 43(1) provides as follows:

“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 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.”

4. From the language of section 74 and Rule 43(1), the scope of rectification of grants of representation is limited to errors in names and descriptions of property. The inclusion of assets of the deceased does not fall within the meaning of the aforementioned provisions.
5. If there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.
6. However, this Court is still clothed with jurisdiction to issue orders that will meet the end of justice. Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
7. The upshot is that the Summons for Rectification dated 30th January 2025 are allowed. The Certificate of Confirmation of Grant be rectified as prayed. Costs be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

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E.K. OGOLA

JUDGE

In the presence of:

N/A for the Applicants

Ms Gisiele M court Assistant

E. OGOLA J.

