



REPUBLIC OF KENYA



**In re Estate of Ibrahim Wathuta Wathuta Mbacki alias Wathuta s/o Mbacke (Deceased)  
(Succession Cause 190 of 2013) [2025] KEHC 7521 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 190 OF 2013**

**DKN MAGARE, J**

**MAY 29, 2025**

**IN THE MATTER OF THE ESTATE OF IBRAHIM WATHUTA  
WATHUTA MBACI ALIAS WATHUTA S/O MBACHE (DECEASED)**

**BETWEEN**

**SAMUEL WACHIRA KAMUHIA ..... 1<sup>ST</sup> APPLICANT**

**ELIZABETH WAGAKI WACHIRA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARY WANGUI WATHUTA ..... PETITIONER**

**AND**

**DAVID GITONGA KIIRU (INTENDED SUBSTITUTE OF MARY GATHAMBI  
KIIRU) ..... INTENDED SUBSTITUTE**

**RULING**

1. This Ruling is in respect of the Amended General Summons dated 30.8.2024 and filed by the Applicant.
2. The Summons seeks for the following reliefs:
  - a. The Honourable Court be pleased to rectify the Grant of Letters of Administration Intestate and Rectified Certificate of Confirmation of Grant herein to read specific names of beneficiaries instead of calling them 1<sup>st</sup> house in LR Eusonyiro/Suguroi/Block VIII/377 and North Tetu Farmers Company Ltd Plot 0063.
  - b. The Honourable court be pleased to order the OCS Ndugamano Police Station to provide security during subdivision of Thegenge/Kihora/69.



- c. This Honourable Court be pleased to order the Deputy Registrar to sign and execute all transfer documents in the place of the Petitioner and all other beneficiaries who have refused to sign to facilitate subdivision and transfer of all parcels of land registered in the name of the deceased.
  - d. The costs be provided for.
3. The application is supported by the affidavit of Samuel Wachira Kamuhia sworn on 30.8.2024 premised on the following grounds:
  - a. The matter was heard and determined and rectified certificate of confirmation of grant was issued on 12.2.2024 to Mary Wangui Wathuta.
  - b. Upon presentation, the Land Registrar declined to transfer LR Eusonyiro/Suguroi/Block VIII/377 and North Tetu Farmers Company LTD PLOT 0063 on the basis that names of the beneficiaries had not been specifically indicated.
  - c. It is in the interest of justice that the names Elizabeth Wagaki Wachira, Lucia Wambui Mathenge and David Gitonga Kiiru as beneficiaries be specified instead of calling them the 1<sup>st</sup> house.
  - d. It is anticipated that some beneficiaries may not cooperate during subdivision hence the need for OCS security enforcement.
4. The Respondent did not object to the equal distribution of the estate of the deceased among the children of the deceased but sought a life interest in LR Thegenge/Kihora/69.

### **Submissions**

5. The Applicant filed submissions on 5.3.2025. It was submitted that the grant should be rectified for the names of the beneficiaries to be specifically indicated against their shares.
6. On the part of the Respondent, she filed submissions on 8.4.2025. It was her submission that her life interest should be protected. She relied on the case of Estate of Mng'arithi Mmiriti (2017) eKLR to submit that adult children should await the termination of a life interest granted to the surviving spouse before any distribution of the estate.
7. She also relied on Rono v Rono & Another (2005) eKLR to submit that a widow should be given due protection under the law.

### **Analysis**

8. The issue before me for determination is whether the grant issued on 13/1/2023 should be rectified in the manner desired by the Applicant.
9. Rectification of grant is provided for in Section 74 of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rule 43(1) of the Probate & Administration Rules. Section 74 provides as follows:-

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.



10. Rule 43(1) provides:-

Where the holder of the 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 and 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.

11. The errors that can be corrected through rectification include errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. As was observed by Muchemi J in *In re Estate of Kahiga Mwathi (Deceased)* [2022] eKLR, rectification of grant of letters of administration is limited to matters set out in Section 74 of the *Law of Succession Act*, in principal to corrections of error which the court may order without changing the substance of the grant. These include errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of persons or things. As was held in the matter of the Estate of Hasalon Mwangi Kahero [2013] eKLR:

“An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased’s death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error? It would be an error if say, a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.

12. The nature of the errors sought to be rectified herein relate to the amendment of the grant by substituting the phrase 1<sup>st</sup> house with the respective named beneficiaries. Similarly in *In the matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased)* [2013] eKLR:- the court held that:

“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 the time or place of the 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.”



13. It is the Applicant's case that he presented the transfer documents to the Land Registrar who declined to transfer the estate because the names of the respective beneficiaries were not revealed. The Applicant attached evidence of the documents presented to the Land Registrar and I have no basis to doubt him.
14. The rectification sought by the Applicant is also not opposed by the Respondent. The Respondent only stated that her life interest should be protected. There is no material in court to show that her life interest is under threat or inversion. I will therefore allow the rectification for Elizabeth Wagaki Wachira, Lucia Wambui Mathenge and David Gitonga Kiiru to be listed as the beneficiaries by amending reference to them as the 1<sup>st</sup> house. In the case of Charles Mutua M'anyoro vs. Maria Gatiria [2009] eKLR it was held that:
- “...in mandatory language, the proviso to section 71 of the *Law of Succession Act* enjoins the court, in case of intestacy, to confirm the grant only if it is satisfied as to the respective identities and shares of all persons beneficially entitled to the estate. Another safeguard in ensuring that only the deceased person's dependants benefit from the estate is in Rule 40(3) of the Probate and Administration Rules which requires that before a grant can be confirmed the particulars of the dependants must be disclosed...It is imperative under the rules that all the dependants be in attendance during the hearing of the application for confirmation save where the dependants have signed a consent in writing. See Rule 40(8).”
15. The Applicant also sought the assistance of the OCS Ndugamano Police during subdivision and I find no basis to deny him this prayer. There is evident animosity within the beneficiaries and it is well and good that law enforcement officers be present during the subdivision to enhance peace.
16. As to the prayer for the Deputy Registrar of court to execute transfer, I find no basis. There is no indication that the administrator has failed or refused to act in accordance with the law. The administrator is entitled to execute all the documents necessary to effect the transfer. Where the administrator fails in their role, the court has powers to call the administrator to action or even fire the administrator from office. This position was adopted and exemplified in the matter of the Estate of Mbaabu M'Abutu (Deceased) [2020] eKLR, where Gikonyo J stated as follows:
- ...Needless, to state that such conduct runs counter to the overall statutory duty of the administrators; to administer the estate of the deceased diligently and without undue delay. Therefore, where an administrator willfully fails or refuses to diligently carry out his statutory duties, the grant made to him should be revoked rather than authorize the court administrators to sign transmission papers, yet, leaving the indolent administrator in situ. I propose courts to take this path in order to relieve estates of deceased persons of belligerent administrators, thereby, enhancing efficiency in administration of those estates by appointing compliant administrators. Nonetheless, notice of such precipitate action should be given to the administrator whose grant is subject of revocation. See section 76 of the *Law of Succession Act*. For emphasis, it makes real legal sense to revoke the grant made to recalcitrant administrators, rather than turn court administrators into administrators of sort of the estate of the deceased, yet, leaving such administrator in the office of personal representative of the deceased.
17. The net effect is that I allow the application and rectify the grant. The rectification is only in reference to LR Eusonyiro/Suguroi/Block VIII/377 and North Tetu Farmers Company Ltd Plot 0063.



## Determination

18. In the upshot, I make the following orders:

- i. The Certificate of Confirmation of Grant dated 12<sup>th</sup> February 2024 is hereby rectified to read specific names of beneficiaries of the 1<sup>st</sup> house as Elizabeth Wagaki Wachira, Lucia Wambui Mathenge and the Estate of Mary Gachambi Kiiru (deceased).
- ii. This applies to the first house's share in land parcel numbers Eusonyiro/Suguroi/Block VIII/377, Land parcel number Thegenge/Kihora/69 and North Tetu Farmers Company Ltd, Plot 0063 as follows:



Name	Description of Property	Share of Heirs
<p>½ Portion – 1<sup>st</sup> House Shall Take The Portion That Horsts Their Deceased Mother’s Grave- David Gitonga Kiiru (substitute of Mary Gachambi Kiiru for Himself And His Siblings) Elizabethi Wagaki Wachira Lucia Wambui Mathenge</p> <p>2<sup>nd</sup> House- Mary Wangui Wathuta Shall Hold A Life Interest In Their Half Portion Share And Upon Her Death This Portion Shall Be Divided Equally Among Her Surviving Children Namely: Samuel Wachira Kamuhia Josphat Maina Kamuhia Margaret Wagaki Njagi Jane Wairimu Maina Peter Bere Wathuta Charles Gatundu Wathuta John Gichuki Waathuta Paul Kabuchi Wathuta Anne Wanjiru Mureithi Leah Wangechi Wathuta Stephen Murage Wathuta</p>	<p>Land parcel number Thegenge/Kihora/69</p>	<p>1.05HA Shared Equally Among 3 Beneficiaries Each 0.35 HA 1.05 HA</p>
<p>1.Estate of Mary Gachambi Kiiru deceased)</p> <p>2.Elizabethi Wagaki Wachira</p> <p>3.lucia Wambui Mathenge 2<sup>nd</sup> House- Mary Wangui Wathuta Shall Hold A Life Interest of Their Share To Terminate Upon Her Death This Portion Shall Be Divided Equally Among Her Surviving Children Namely: Samuel Wachira Kamuhia Josphat Maina Kamuhia Margaret Wagaki Njagi Jane Wairimu Maina</p>	<p>Euasonyiro/Suguroi/Block VIII/377</p>	<p>1.4525HA Shared Equally Among 3 Beneficiaries Each 0.4842 HA 4.3575HA</p>



Peter Bere Wathuta Charles Gatundu Wathuta John Gichuki Waathuta Paul Kabuchi Wathuta Anne Wanjiru Mureithi Leah Wangechi Wathuta Stephen Murage Wathuta		
1. Estate of Mary Gachambi Kiiru deceased) 2. Elizabethi Wagaki Wachira 3. Lucia Wambui Mathenge 2 <sup>nd</sup> House- Mary Wangui Wathuta Shall Hold A Life Interest of Their Share to Terminate Upon Her Death This Portion Shall be Divided Equally Among Her Surviving Children Namely: Samuel Wachira Kamuhia Josphat Maina Kamuhia Margaret Wagaki Njagi Jane Wairimu Maina Peter Bere Wathuta Charles Gatundu Wathuta John Gichuki Waathuta Paul Kabuchi Wathuta Anne Wanjiru Mureithi Leah Wangechi Wathuta Stephen Murage Wathuta	North Tetu Farmers Company LTD Plot 0063	Ratio 4/16 With each getting 1/12 of a share Ratio 12/16

- iii. The Officer Commanding Ndugamano Police Station is hereby directed to provide security during subdivision of Title No. Thegenge/Kihora/69.
- iv. The Deputy Registrar to sign transmission documents, for parties who will not sign or refuse to do so.
- v. Each party shall bear own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Applicants present as per the filed list.



