



**In re Estate of Wanza Muli (Deceased) (Succession Cause
270 of 2001) [2025] KEHC 7628 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 270 OF 2001**

EN MAINA, J

MAY 29, 2025

IN THE MATTER OF THE ESTATE OF WANZA MULI (DECEASED)

IN THE MATTER OF

GRACE PETER KITHUKA 1ST ADMINISTRATOR

NICHOLAS MUTUA MULI 2ND ADMINISTRATOR

RULING

1. Before this court is a Summons for Rectification of grant dated 19th February 2025 that has been filed by Grace Peter Kithuka the 1st Administrator seeking a redistribution of the estate of her late mother-in-law Wanza Muli. The gist of her application is that Nicholas Mutua Muli insists on getting ½ acre of land adjacent to the road which she considers is unfair. She has proposed a mode of distribution which she considers to be more equitable and prays that the previous mode of distribution be set aside and be replaced with hers.
2. The application is vehemently opposed by Nicholas Mutua Muli – the 2nd Administrator as according to him the proposed redistribution will deprive him of the ½ acre of land adjacent to the road. It is his contention that the grant having been confirmed and the estate distributed it cannot be re distributed through a summons for rectification as there is no error to be rectified.
3. In a Supplementary affidavit sworn on 24th April 2025 the 1st Administrator/Applicant reiterates the contents of her supporting affidavit and states that her proposed mode of distribution has casually been opposed without any proposal whatsoever.
4. The 3rd Administrator did not participate in this application.

Submissions

5. The application was canvassed by way of written submissions. For the 1st Administrator it was submitted that she had demonstrated on a balance of probabilities that the certificate of confirmation



contains glaring typographical errors warranting rectification; that the 2nd Administrator is settled in LR. Masii/Mithini/305 and is therefore being unfair for insisting on another ½ acre next to the road; that his claim to the said half acre is but greed and gluttony and hence this application should be allowed with costs.

6. On his part learned Counsel for the 2nd Administrator/ Respondent submitted that rectification is an equitable remedy that allows a court to correct errors where the written words do not accurately reflect the parties agreement; that rectification is not review and the court cannot re-examine distribution in the original confirmed grant by way of rectification; that that is not what was contemplated by Section 74 of the *Law of Succession Act*. In support of his submissions, learned Counsel placed reliance on Cause no 2647 of 1997, *in the matter of the estate of James Wainaina Ng'anga alias Wainanina Ng'ang'a*. Counsel urged this court to dismiss the application.

Determination

7. This court has carefully considered the application, the affidavits, the rival submissions of the parties, the cases cited, the court record and the law. The question before the court is whether the Certificate of Confirmed Grant dated 24th January 2022 ought to be rectified in terms of the schedule of distribution proposed by the 1st Administrator/Applicant.
8. As correctly stated by both parties the court's power to rectify a grant is provided for under Section 74 of the *Law of Succession Act* and Rule 43(1) of the *Probate and Administration Rules*.

Section 74 states -

“Errors in names and descriptions, or in setting out 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.”

9. Rule 43(1) of the *Probate and Administration Rules* provides that -

“Where the holder of grant seeks pursuant to 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 places 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.”

10. The errors that may be corrected by the court are thus;
 - a. names or descriptions of any person or thing or as to the time and places of death of the deceased or,
 - b. in the case of a limited grant, the purpose for which the grant was made
11. In the matter of the Estate of Geoffrey Kinuthia Nyamweinga deceased [2013] eKLR Musyoka J stated as follows in reference to the above provisions;

“What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out of 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.



.....

A grant and a certificate of confirmation of grant are court orders taking the form of a certificate. The grant is made after the court allows the petition for a grant of representation, whether it be of letters or of probate. A certificate of confirmation of grant is issued following a successful application for confirmation of the grant. The two are not pleadings, and therefore the principles which govern their rectification are not those applying to amendment of pleadings but those that apply to amendment of court orders.

A court order made by a civil court can only be amended through a review application, and not through an application for amendment of pleadings. The *Law of Succession Act* does not provide for amendment of pleadings in succession causes, but it does provide amendment of grants. This is through either Section 74 of the *Law of Succession Act* to the extent provided in that provision, or through a review application through Order 44 of the Civil Procedure Rules. Order 44 was formerly Order XLV, which is one of the provisions of the Civil Procedure Rules imported into succession practice through Rule 63 of the Probate and Administration Rules.”

12. Having considered the Summons before the court, there is no error in the names or the description of anything that is sought to be rectified. What is sought is a re-distribution of the estate in order to suit the Applicant as according to her the Respondent already has another parcel of land that is road facing. Altering the mode of distribution for the reason advanced cannot be a reasonable ground for redistribution of the estate even had the application been brought by way of review. It cannot even be the basis for revocation of the grant and I dare say that it for situations such as these that beneficiaries are encouraged to sit and agree on the mode of distribution as they, more than the court are aware of the situation on the ground. Once the court has confirmed a grant it can only be revoked on the grounds set out in Section 76 of the *Law of Succession Act* but not otherwise.
13. Redistribution however can be allowed where it is discovered that a property was left out or where the acreage was not what the Administrators envisaged it to be or for any other reasonable ground which I do not not consider to be the case in this application.
14. This court finds no merit in the Summons dated 19th February, 2025. The same is dismissed in its entirety.
15. On the costs, this being a family matter, the order that best commends itself to me is that each party should bear their own costs.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERD VIRTUALLY ON THIS 29TH DAY OF MAY 2025.

E.N. MAINA

JUDGE

IN THE PRESENCE OF:

Grace Peter Kithuka - 1st Administrator (in court)

Mr. Kamanda for the 2nd Administrator

Mr. Mukula for 1st Administrator

Geoffrey – Court Assistant

