



REPUBLIC OF KENYA



**In re Estate of Oscar Njoroge Kimani - Deceased (Probate & Administration  
E132 of 2022) [2024] KEHC 3150 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 3150 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
PROBATE & ADMINISTRATION E132 OF 2022  
DO CHEPKWONY, J  
JANUARY 25, 2024  
IN THE MATTER OF THE ESTATE OF OSCAR NJOROGE KIMANI- DECEASED  
  
IN THE MATTER OF  
CICILIA WAIRIMU NJOROGE ..... APPLICANT**

**RULING**

1. What is before the court for determination is the Summons for Rectification of Grant dated 13<sup>th</sup> December, 2023. It is supported by the Affidavit of Cicilia Wairimu Njoroge sworn on 13<sup>th</sup> December, 2023. It is also accompanied by a Consent to the Rectification of the Grant dated 13<sup>th</sup> December, 2023.
2. In the said Summons, the Applicant/Petitioner seeks to amend the Certificate of Confirmation of Grant which was issued on 3<sup>rd</sup> October, 2023 to include the following shares of the estate which had been left out:-
  - i. 1025 shares at Scangroup PLC.
  - ii. 102 Shares at Kenya Commercial Bank Kenya PLC Kenya Limited.
  - iii. 480 shares at National Bank of Kenya.
  - iv. Shares at ABSA Kenya Plc Kenya Limited.
  - v. Shares at Kenya Airways PLC Kenya Limited.
  - vi. Shares at Cooperative Bank Kenya PLC Kenya Limited.
  - vii. Shares at Equity Bank Kenya PLC Kenya Limited.



3. In determining this application, the starting point is the law on rectification of grant which is enshrined under Section 74 of the *Law of Succession Act*, Cap 160, Laws of Kenya 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.”

Rule 43(1) goes on to provide 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 a reading of the application and all the annexures attached thereto, it is evident that the Petitioner has followed the due procedure for the Summons for Rectification of the Grant. However, it is noteworthy that the omission of the various shares does not qualify to be an error or a mistake as this goes into the addition of new assets and yet no proof has been availed to court to confirm them.
5. It should be noted that the purpose of rectification is to address errors or omissions. The court *in the Matter of the estate of Has Alon Mwangi Kabero* [2013] eKLR, when dealing with the issue of error or mistake held as follows:-

“When dealing with an application for rectification of grant to add a full name of person who was omitted.”

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 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.

6. In the instant case, the court finds that the shares of the estate of the deceased being sought to be added to the Certificate of Confirmation of Grant cannot be said to be mere errors or mistake for having been left out as the same were not availed to court at the time of Confirmation of Grant. Further, the Petitioner has not provided any evidence in terms of share certificates or official correspondence from the respective banks or entities to prove that the deceased owned the said shares with them and the respective number of shares.
7. The court also notes that since the shares were not availed at the time of Confirmation of Grant, the proper approach to be taken by the Petitioner is to have an Application for review of the court orders



on the Confirmation of Grant filed and not Summons for Rectification since the addition of shares or assets of the estate cannot be said to be mere errors.

8. The court is guided by the decision of Hon Justice Musyoka *In Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR where he stated thus:-

“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 affected 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.”

9. In the absence of proof, this court declines to allow the Summons for Rectification of Grant dated 13<sup>th</sup> December, 2023. The Petitioner is hereby directed to move the court with a proper application and avail the respective evidence for the shares.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 25<sup>TH</sup> DAY OF JANUARY, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Wangari Njuguna counsel for the Estate of the Deceased

Court Assistant - Martin

