



REPUBLIC OF KENYA



In re Estate of Lekinyot Ole Lanke (Deceased) (Succession Cause E002 of 2021) [2024] KEHC 2486 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE E002 OF 2021
F GIKONYO, J
FEBRUARY 29, 2024**

IN THE MATTER OF

**NOOLARAMI ENOLE LANKE 1ST PETITIONER
KIOOLU LANKE 2ND PETITIONER
SIMON SAYIALEL LANKE 3RD PETITIONER
KIPARKI OLE LANKE 4TH PETITIONER**

RULING

1. Placed before this court is a Summons for rectification of grant dated 17/10/2023, in which the administrators of the estate of Lekinyot Ole Lanke (deceased) are seeking: -
 1. That the description of property numbered 27 in the schedule be rectified from Cis-mara/Oleleshwa/1514 to Cis-mara/Ewaso Nyiro/1514 which is the correct description of the property.
 2. That the beneficiary namely Kaitet Ole Lanke who is listed as numbered 31 in the schedule to get a share of 0.0647 acres of the property described as Cis-mara/Oleleshwa/18021 was erroneously omitted.
 3. That costs of this application shall be provided for.
2. The Summons are based on the grounds set out therein and the Affidavit of Noolarami Enole Lanke, Kioolu Lanke, Simon Sayialel Lanke And Kiparki Ole Lanke.
3. The petitioners/applicants averred that the description of a property Cis-mara/Oleleshwa/1514 was erroneous as the correct description of the estate property is Cis-mara/Ewaso Nyoro/1514.
4. They stated also that, one of the beneficiaries namely Kaitet Ole Lanke was erroneously omitted from getting a share of Cis-mara/Oleleshwa/18021 which was to be subdivided among all the 17



beneficiaries in equal share of 0.0647 acres. The administrators are desirous that the above errors be rectified.

Analysis And Determination

5. Can the rectification sought be carried through or granted under section 74 of the [Law of Succession Act](#)?

Rectification of grant

6. Rectification of grants is provided for in section 74 of the [Law of Succession Act](#), cap 160, Laws of Kenya, and Rule 43(1) of the [Probate and Administration Rules](#).

7. 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.”

8. 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.”

9. The language of section 74 of the [Law of Succession Act](#) and Rule 43(1) of the Probate and Administration Rules limits the scope of rectification of grants of representation to 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. The court may add that, such other minor errors in that genre could also be rectified.
10. Section 74 of the [Law of Succession Act](#) provides for a summary procedure, Thus, making the jurisdiction of the court under the section quite limited, incapable of encompassing major or substantial issues or which are contested ([In the matter of the estate of Geoffrey Kinuthia Nyamwinga \(deceased\)](#) [2013] eKLR, [In the matter of the estate of Hasalon Mwangi Kabero](#) [2013])
11. In this case, the applicants in prayer 1 seek to rectify the description of the estate property which was erroneously described as Cis-mara/Oleleshwa/1514 instead of Cis-mara/Ewaso Nyiro/1514. The error falls within the court's power to rectify under section 74 of the [Law of Succession Act](#). The rectification does not alter the core of the judgment but simply supplies proper and complete description of the said property.
12. Accordingly, rectification is granted of the description of property Cis-mara/Oleleshwa/1514 to read Cis-mara/Ewaso Nyiro/1514. The certificate of confirmation of grant to be amended accordingly.
13. However, the request to add a beneficiary or provide a share for him is a substantial one. It has been stated that the beneficiary namely Kaitet Ole Lanke who is listed as number 31 in the schedule should get a share of 0.0647 acres out of the property described as Cis-mara/Oleleshwa/18021- a matter



they say was erroneously omitted. Such concerns distribution of the estate, and may require further evidence or interrogation by the court in the presence of parties. This course is proposed by law, averts introduction of strangers in the estate, or complete disruption or distortion of beneficiaries' shares in the estate. And, given the limited scope of section 74 of the *Law of Succession Act*, it may not be appropriate to carry through the amendment sought in a summary procedure. Perhaps, a proper application should be for review which is a much wider jurisdiction.

14. For that reason, I grant only rectification; of the description of estate property as above.
15. Addition or provision of a share to Kaitet Ole Lanke shall be done in the presence of all parties on a date to be appointed by the court.
16. No order as to costs as this is a family matter.
17. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 29TH DAY OF FEBRUARY, 2024.

F. GIKONYO M.

JUDGE

In the presence of: -

Court Assistant – Otolu

Mrs. Kaaria for Petitioners - Present

