



REPUBLIC OF KENYA



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**In re Estate of Karang'ae Kesier (Deceased) (Succession Cause 28 of 2017)
[2023] KEHC 22341 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE 28 OF 2017
F GIKONYO, J
SEPTEMBER 21, 2023**

JUDGMENT

1. Before the court is the summons for rectification of grant dated 12.06.2023. The application is premised on section 47 of the *Law of Succession Act* Rules 43(3) and 73 of the Probate and Administration Rules. The applicant seeks the following orders;
 - i. Spent.
 - ii. That the certificate of confirmation of grant issued to Alex Karangae in this matter confirmed on the 29th June 2010 be amended pursuant to the orders issued on the 4th day of July 2018 by Hon. J.W. Bwonwong'a in the following respects;
 - a. That the confirmed grant dated 29th June 2010 be and is hereby amended in respect to property comprise in Narok/CIS-Mara Nairagie Enkare/77 and be distributed as follows;



NAME	SHARE IN ACREAGE
Benson Shau Kesier	4 Acres
David Kesier Karangae	2.1 Acres
Alex Karangae	2.1 Acres
Simion Kofo Karangae	2.1 Acres
Muhia Karangae	2.1 Acres
Benson Kamau Karangae	2.1 Acres
Joseph Karangae	2.1 Acres
John Njoroge Karangae	2.1 Acres
Hezron Kofo Karangae	2.1 Acres
George Kesier Karangae	2.1 Acres

- iii. That no order as to costs.
2. The application is based on the grounds set out on the face of the application and the supporting affidavit of Alex S. Karangae sworn on 12.06.2023.
 3. The applicant argued that the certificate of confirmation of grant herein issued to Alex S. Karangae Rawal (retired).
 4. Pursuant to the court orders by Ho. J.W. Bwonwong'a issued on 04.07.2018 the above certificate of confirmation was supposed to be amended to provide Four (4) acres to Benson Shau Kesier in respect to property comprise in Narok/ Cis-Mara Nairagie Enkare /77.
 5. There is urgent need to rectify the said certificate of confirmation to comply to with the court orders and in order to enable distribution of the estate of the deceased among the beneficiaries.
 6. The said certificate of confirmation presents anomalies and difficulties in transfer process if not amended.
 7. The amendment is material for the benefit of the beneficiaries who cannot fully enjoy without amending the said certificate of confirmation in compliance with the court orders.
 8. That it is in the interest of justice that the said certificate of confirmation be amended to include Benson Shau Kesier indicated above.
 9. It would not be possible to distribute the said property without amendment of the said certificate of confirmation of grant.
 10. There is a risk of the estate going to waste if the same are not distributed to the beneficiaries.



11. That the amendments which are as a result of the honourable court orders is not opposed by any of the beneficiaries by virtue of it being the court order which no appeal has been preferred.

Analysis And Determination

12. The application herein has been made under summons for rectification of Grant. Rectification of Grants is provided for under section 74 of the [Law of Succession Act](#), Cap 160, Laws of Kenya 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.”

13. Rule 43(1) of the [Probate and Administration Rules](#) states as follows: -

“43(1) 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 the 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 issued.”

14. But, the procedure for rectification of grant is quite limited to correction of errors in description of a property or a name or purpose in a limited grant. The procedure is not appropriate or competent to handle substantive matters.

15. The appropriate procedure where substantive matters have arisen which should be incorporated in the grant, is review jurisdiction. And, as a matter of procedural consequence, a successful review of orders of the court invariably entails amendment of the grant and certificate of confirmation, as the case may be. It is therefore prudent that the applicant seeking review should also seek these corollary orders to avoid future and unnecessary litigation as is the case here.

16. See [Re Estate of Charles Kibe Karanja \(Deceased\)](#) 2015 eKLR where the Court held as follows: -

“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.” (own emphasis)

17. In this case, the parties should have applied in the initial application in which orders for amendment of grant was made, for orders of fresh distribution of the affected property. And, as a consequence of orders of distribution, issuance of an amended certificate of confirmation of grant would have been invariable.



18. Whereas the applicant has approached the court through the wrong procedure, following the amendment of the grant, it is only fair and just to review earlier distribution on, and order a fresh distribution in respect of the affected property.
19. Accordingly, the application dated 12th June 2023 is allowed. Duly amended certificate of confirmation to issue. No order as to costs.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
21ST DAY OF SEPTEMBER, 2023.**

F. GIKONYO M.

JUDGE

