



In re Estate of John Omae Nyangweso (Deceased) (Succession Cause 24 of 2006) [2024] KEHC 4924 (KLR) (13 May 2024) (Ruling)

Neutral citation: [2024] KEHC 4924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 24 OF 2006
TA ODERA, J
MAY 13, 2024**

IN THE MATTER OF

MARY NYANCHAMA APPLICANT

RULING

1. The applicant moved this court by way of Summons for Rectification of Certificate of Confirmation of Grant and Grant filed by the firm of Henry Kaburi & Co. Advocates and dated 31.8.23 wherein the Applicants sought the following orders:
Spent
2. The Honourable Court be pleased to rectify grant and certificate of confirmation of grant dated 11th day of July 2006 to correct misspelt names of some of the beneficiaries.
2. This Honourable court be pleased to rectify the order of certificate of confirmation to bear that land parcel Nyaribari Masaba /Bonyamasicho /127 as follows:
 - a. Mary Nyanchama Omae, Kennedy Itira Omae and Charles Arasa Omae to jointly get 0.30 ha
 - b. Ratemo Nyatichi to get 0.23ha and 0.30 ha.
3. The application is based on the grounds that one of the beneficiaries was omitted in the confirmed grant and the Christian name of another beneficiary was also omitted and so there is need to rectify the grant to correct the same.
4. The application is based on the annexed affidavit of the applicant who deponed that Charles Arasa Omae a beneficiary was described as Arasa Omae in the confirmed grant and that Ratemo Nyatichi was left out of the list of beneficiaries in the said grant and hence the need for rectification.

Determination

5. I have considered the Application, the Supporting Affidavit and the Annexures therein.



6. I have perused the file herein and noted that the Grant of Letters of Administration Intestate in this matter was issued on 11.7.2006 to Mary Nyanchama.
7. The Applicant filed the Summons seeking to rectify of a grant. Section 74 of the [Law of Succession Act](#) provides as follows:
 74. Errors may be rectified by court
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.
8. Rule 43(1) of the [Probate and Administration Rules](#) provides thus:
 43. Rectification of grant
 - (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.
9. My understanding of Section 74 of the [Law of Succession Act](#) is that rectification is only for clear matters being errors in names, descriptions, time and place of deceased's death and omissions.
10. I am further fortified by the numerous decisions touching on the scope of rectifications as relates grants. Some of these decisions include [Re Estate of Kabiga Mwatbi \(Deceased\)](#) [2022] eKLR; [Re Estate of Samuel Cheruiyot Chesire](#) [2022] eKLR; [Re Estate of Philip Opuka](#) [2015] eKLR; [Re Estate of Late Robinson Wachira Mwangi \(Deceased\)](#) [2020] eKLR; [Re Estate of John Kirebu Guchu \(Deceased\)](#) [2013] eKLR; [Re Estate of Stanley Mwiti Itheria \(Deceased\)](#) [2017] eKLR; [Re Estate of Joseph Mapesa Nakuku \(Deceased\)](#) [2019] eKLR and Estate of Hasalon Mwangi Kahero [2013] eKLR.
11. I am strongly persuaded with the finding in [Estate of Hasalon Mwangi Kabero](#) [2013] eKLR where the Court held that the provisions of the Civil Procedure Rules are not analogous to the provisions of Section 74 of the [Law of Succession Act](#) and Rule 43 of the [Probate and Administration Rules](#). The [Law of Succession Act](#) only permits rectification of grants in 3 delineated areas:
 - A. Errors in names and descriptions of persons or things;
 - B. Errors as to time or place of death of the deceased; and
 - C. In cases of a limited grant, the purpose for which such limited grant is made.
12. The Court in [Estate of Hasalon Mwangi Kabero](#) (*Supra*) further held that an error is essentially a mistake. That mistake must however fall within the ambit of Section 74 of the [Law of Succession Act](#) and Rule 43 of the [Probate and Administration Rules](#).
13. The beneficiaries appeared before this court on 29.1.24 and agreed to the rectification and the review of the orders issued confirming the grant dated 11.7.2006 to correct the errors and include a new beneficiary. The application is within the ambit of Section 74 of the [Law of Succession Act](#) and Rule 43 (1) of the [Probate and Administration Rules](#). I allow the application with no orders as to costs as it is a family matter.
14. The estate be administered within 90 days.



TERESA ODERA

JUDGE

13.5.2024

Delivered virtually Via Microsoft Teams platform

In the presence of:

Kaburi for Petitioner

Petitioner and beneficiaries present in open court

Court Assistant- Oigo

