



**In re Estate of Koima arap Kiptalam alias Koima Cheptalam (Deceased) (Succession Cause 413 of 2012) [2024] KEHC 10365 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 413 OF 2012  
RN NYAKUNDI, J  
AUGUST 23, 2024  
IN THE MATTER OF THE ESTATE OF KOIMA ARAP  
KIPTALAM ALIAS KOIMA CHEPTALAM-(DECEASED)**

**BETWEEN**

**CAROLINE JEPKOGEI ..... PETITIONER**

**AND**

**WILLIAM KIPKEMOI KOIMA ..... 1<sup>ST</sup> OBJECTOR**

**HARON KIBET KOIMA ..... 2<sup>ND</sup> OBJECTOR**

**LILY CHEPNGENO LANGAT ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. What is pending before me for determination is summons for rectification of certificate of confirmation of grant dated 19<sup>th</sup> June 2024 premised upon section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration rules, seeking orders as follows:
  - a. That Haron Kibet Koima and Caroline Jepkogei Koima be and are hereby appointed as the joint administrators of the Estate of the deceased.
  - b. That the rectified and amended certificate of confirmation of grant dated 29<sup>th</sup> March, 2023 be and is hereby rectified as follows;
    - i. Lembus /Torongo/28 be shared as follows;
      - a. Haron Kibet Koima to get 10.9 acres;
      - b. Caroline Jepkogei Koima to get 7.4 acres
      - c. Haron Kipchumba Koima to get 11.4 acres



- ii. Uasin Gishu/Kipkabus Settlement Scheme/75 to be distributed as follows;
    - a. William Kipkemoi Koima to get 6.2 acres;
    - b. Caroline Jepkogei Koima to get 4 acres;
  - iii. Baringo/Mumberes/642 to be distributed as follows;
    - a. Lily Chepngeno Langat to get 11.2 acres;
    - b. William Kipkemoi Koima to get 5 acres;
    - c. Haron Kibet Koima to get 1 acre.
2. The summons is supported by the annexed affidavit sworn by Haron Kibet Koima & Caroline Jepkogei Koima, which attempts to put the cause into context and for that reason I shall have it reproduced. The Applicants deposed as hereunder;
- a. That we are the 1<sup>st</sup> Objector and the Petitioner herein respectively hence competent to swear this affidavit.
  - b. That at the time of his death the deceased left behind assets in terms of the schedule to the confirmation of grant.
  - c. That the estate of the deceased was erroneously distributed
  - d. That we pray that rectified certificate of confirmation of grant be rectified as per the amended Consent to mode of distribution.
  - e. That the beneficiaries herein have agreed to the mode of distribution.
  - f. That we now swear this affidavit in support of the application now before this Honourable Court.
3. The Application is unopposed.

### **Analysis and Determination**

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

4. This court is alive to the fact that rectification of a grant under Section 74 of the Law of Succession Act is in respect of errors and miss-descriptions only. That Section provides as follows:

'74. 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.'

5. Rule 43 (1) of the Probate and Administration Rules, by which the substantive provision of Section 74 of the Law of Succession Act is enforced, instructively provides:

'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 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.'



6. It is clearly a procedure for correction of minor errors in the in the grant, and I must respectfully agree with the position observed in *Re Estate of Njagi Rurima (Deceased)* [2020] eKLR, where the court (F Muchemi J) said: ‘There is no provision in the Act that permits rectification or amendment by adding a new beneficiary in the grant or to redistribute the estate.’

7. Similarly, with the Court in *re estate of Charles Kibe Karanja (Deceased)* [2015] eKLR (W Musyoka J) interpreting section 74 of the Act elaborated as follows:

‘From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the court through Section 74 of the Law of Succession Act, for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or 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 effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.’

8. I am strongly persuaded with the finding in *Estate of Hasalon Mwangi Kahero* [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.

9. The Applicant herein seeks orders from this Honourable Court: that Haron Kibet Koima and Caroline Jepkogei Koima be appointed as the joint administrators of the Estate of the deceased; that the rectified and amended certificate of confirmation of grant dated 29<sup>th</sup> March, 2023 be rectified as follows;

- i. Lembus /Torongo/28 be shared as follows;
  - d. Haron Kibet Koima to get 10.9 acres;
  - e. Caroline Jepkogei Koima to get 7.4 acres
  - f. Haron Kipchumba Koima to get 11.4 acres
- ii. Uasin Gishu/Kipkabus Settlement Scheme/75 to be distributed as follows;
  - c. William Kipkemoi Koima to get 6.2 acres;



- d. Caroline Jepkogei Koima to get 4 acres;
- iii. Baringo/Mumberes/642 to be distributed as follows;
  - d. Lily Chepngeno Langat to get 11.2 acres;
  - e. William Kipkemoi Koima to get 5 acres;
  - f. Haron Kibet Koima to get 1 acre.
- 10. The Applicants have advanced this by stating: that at the time of his death the deceased left behind assets in terms of the schedule to the confirmation of grant; that the estate of the deceased was erroneously distributed; that we pray that rectified certificate of confirmation of grant be rectified as per the amended Consent to mode of distribution and the beneficiaries herein have agreed to the mode of distribution.
- 11. The court finds that by allowing the sought substitution of the 3 parcels of land in a totally distinct manner, the distribution of the estate of the deceased as ordered by the court will be effectively distorted and altered.
- 12. This court, therefore, takes the view in agreement with the courts in Re Estate of Njagi Rurima (Deceased) [2020] eKLR and re estate of Charles Kibe Karanja (Deceased), supra, that the sought substitution of the 3 properties cannot be effected through rectification of the grant as sought by the Petitioner in the Summons for Rectification of Grant dated dated 19<sup>th</sup> June 2023. It must be a substantive application that permits the review or reconsideration by the court of the orders of distribution made in the confirmation of the grant.

Accordingly, for the reasons set out above, the court makes the following orders:

- a. That Haron Kibet Koima and Caroline Jepkogei Koima be and are hereby appointed as the joint administrators of the Estate of the deceased.
- b. That the rectified and amended certificate of confirmation of grant dated 29<sup>th</sup> March, 2023 be and is hereby rectified as follows;
  - i. Lembus /Torongo/28 be shared as follows;
    - a. Haron Kibet Koima to get 10.9 acres;
    - b. Caroline Jepkogei Koima to get 7.4 acres
    - c. Haron Kipchumba Koima to get 11.4 acres
  - ii. Uasin Gishu/Kipkabus Settlement Scheme/75 to be distributed as follows;
    - a. William Kipkemoi Koima to get 6.2 acres;
    - b. Caroline Jepkogei Koima to get 4 acres;
  - iii. Baringo/Mumberes/642 to be distributed as follows;
    - a. Lily Chepngeno Langat to get 11.2 acres;
    - b. William Kipkemoi Koima to get 5 acres;
    - c. Haron Kibet Koima to get 1 acre.



13. By dint of this order, the administrators are bound by law under section 83(g) of the Law of Succession Act, to submit a final probate account on the transmission of the estate as provided for within the Certificate of Confirmation of Grant as is stipulated in the law as of necessity, it is six (6) months from date of this rectification of the Grant.
14. This submission of the probate account to the court will be followed by a final order of discharging the administrators from being held liable as legal personal representatives acting on behalf of the Deceased in the administration of the intestate estate. As this timeline is a statutory dictate, no administrator is permitted to overreach it or lapse it without leave of the court. The legislative intent of capping procedural timeline in the drafting of a statute was to ensure efficiency, effectiveness and fairness of the process as justice delayed is justice denied. If the probate courts were to sustain the spectrum of time line set by the Law of Succession Act, the travesty of justice being experienced in the testate and intestate administration could be a thing of the past. Like for the election cycle of justice where time is unforgiving, time has come for serious enforcement of the timelines set in the Law of Succession Act for petitioning, hearing and determination of succession matters to be concluded within the letter and the spirit of the law. This is a litigation within which timelines are set in the statute and not within the subsidiary legislation. It goes without saying that the failure by the probate courts not to adhere by the timelines set out in the Law of Succession Act has been fatal to both procedural and substantive justice in adjudication of such matters.
15. Indeed, inherent jurisdiction of the court is provided for under Rule 73(1) of the Probate and Administration Rules. But that rule does not import the luxury for the probate courts to hear and determine matters outside the set timelines. Fundamentally, any breach of these provisions without compelling force of evidence amounts to the disobedience of a court order punishable under the rubric of contempt proceedings on the face of the record. The costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA EMAIL AT ELDORET, THIS 23<sup>RD</sup> DAY OF AUGUST 2024**

.....

**R. NYAKUNDI**  
**JUDGE**

