



**In re Estate of Paul Marusoi alias David Chesimet Arap Koech (Deceased) (Succession Cause 191 of 2004) [2024] KEHC 11324 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11324 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 191 OF 2004  
JK SERGON, J  
SEPTEMBER 26, 2024**

**IN RE ESTATE OF PAUL MARUSOI ALIAS DAVID CHESIMET ARAP KOECH (DECEASED)**

**BETWEEN**

**JOHN KIMUTAI KIGET ..... APPLICANT**

**AND**

**JANE CHERONO NGENO ..... 1<sup>ST</sup> RESPONDENT**

**GEOFFREY CHERUIYOT ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. There are two applications coming up for determination contemporaneously. There is a summons for revocation of grant dated 15th November, 2023 seeking the following orders;
  - i. Spent
  - ii. That the honourable court do revoke or annul the certificate of confirmation of grant dated 9th October, 2023 issued to the 1st respondent.
  - iii. That the honourable court do issue such further orders and directions as it may deem just and fit.
  - vii. That costs of this summons be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of John Kimutai Kiget the applicant herein.
3. The applicant avers that he is a nephew of the deceased and that before his uncle passed he was a bachelor and was living alone in the parcel of land known as Kericho/Kipchimchim/2782. The applicant further avers on account of his uncle's old age. He was requested to stay and take care of him by the deceased's family members and clansmen.



4. The applicant avers that the 1st respondent was brought by family members as a househelp to look after the deceased, since he was old and frail and that the deceased was never married to the 1st respondent and that the customary marriage rites according to Kipsigis culture were never performed.
5. The applicant avers that the 1st respondent came along with her children including the 2nd respondent and that they are therefore not the deceased's children and they were not maintained and/or acknowledged by the deceased.
6. The applicant avers that grant dated 9th October, 2023 should be revoked and/or annulled because the proceedings to obtain the grant were defective in substance and the grant was obtained fraudulently by the making of a false statement and the concealment of material facts on the part of the respondents.
7. The 1st respondent Jane Cherono Ngeno filed a replying affidavit as the administratrix of the deceased's estate in response to the application dated 15th November, 2023
8. The 1st respondent avers that the application is frivolous, vexatious and an abuse of court process and therefore ought to be dismissed with costs.
9. The 1st respondent further avers that before she and her son Geoffrey Cheruiyot petitioned this court for letters of administration intestate, they obtained a letter from the chief dated 20th August, 2004 by the Assistant Chief of Maso Sub Location which confirmed that she was the wife to the deceased whereas the applicant is a nephew of the deceased and therefore not a beneficiary of the estate of the deceased.
10. There is a summons for rectification of grant dated 13th February, 2024 seeking the following orders;
  - i. That the grant of letters of administration issued and confirmed to Jane Cherono Ngeno and Geoffrey Cheruiyot in this matter on 13th March, 2014 be rectified.
  - ii. That the costs of this application be provided for.
11. The application is supported by grounds on the face of it and the supporting affidavit of Paul Rotich the applicant therein.
12. The applicant avers that a grant of letters of administration intestate of the estate of the deceased was made to Jane Cherono Ngeno and Geoffrey Cheruiyot on 13th March, 2014 and the same confirmed on 9th October, 2023.
13. The applicant avers that the grant as confirmed on 9th October, 2023 contained errors on the part of distribution of the estate and should be therefore rectified to omit the share Jane Cherono Ngeno to hold in trust for herself and other listed beneficiaries as the same were not known to him and to the other beneficiaries at the time of confirmation of grant.
14. The applicant avers that the grant which was confirmed on 9th October, 2023 should be rectified and each of the surviving beneficiaries allocated his or her share as per the family's minutes dated 7th November, 2023.
15. The applicant avers that it is desirable to have the said grant rectified by the court and the properties of the estate namely; Kericho/Kipchimchim/2782 be registered in the names of the deceased's heirs as confirmed by the area Chief Kapsaos Location.
16. The 1st petitioner/respondent therein Jane Cherono Ngeno filed a replying affidavit in response to the application dated 13th February, 2024 as the administratrix of the estate of the deceased.



17. The 1st petitioner/respondent avers that the amendments proposed in the summons for rectification are central and far reaching as they propose to not only alter the beneficiaries but to also alter the mode of distribution which position is not contemplated by the *law of succession act*.
18. The parties were directed to file written submissions for consideration by this Court.
19. The applicant(s) complied and filed written submissions in respect to the application for revocation of grant. The applicant seeking revocation of grant, in his submissions maintained that the deceased was not married to the respondent at the time of his death, and that in the circumstances he was entitled to a share of the estate of the deceased as a surviving relative of the deceased.
20. The respondents complied and filed their submissions in respect to both applications.
21. The respondent contended that the application for revocation of grant does not meet the threshold espoused under section 76 of the *law of succession act*.
22. The respondent contended that via the summons for rectification of grant, the applicant is desirous of altering not only the beneficiaries to the estate but also the mode of distribution of the estate and the same is not envisaged by section 74 of the *law of succession act*, rectification of a grant is permissible to cure minor errors, mistakes and irregularities in the grant.
23. Having considered pleadings and submissions by the parties, the issues for determination by this court are whether to revoke the grant confirmed on 9th October, 2023 and/or rectify the said grant.
24. On the issue as to whether to revoke the certificate of confirmation confirmed on 9th October, 2023, this Court finds that the applicant has not demonstrated any of the grounds for revocation as set forth in section 76 of the *Law of Succession Act*. The applicant herein has a duty to prove any grounds set out in Section 76 of the *Law of Succession Act* before the grant issued is revoked. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 OF 2000, Mwita J. in a decision rendered on 15th November, 2016, noted thus: “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
25. On the issue of rectification of the said grant this Court finds that the proposed amendments to wit redistribution of the estate property are beyond the scope envisaged in section 74 of the *law of succession* and the rule 43 (1) of the *Probate and Administration Rules*. In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR where the court stated; “The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules*... What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out the time or place of the deceased’s death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general...” The scope of rectification envisaged in the Law of Succession is limited, major or substantial issues should be addressed through an application for review of judgement or appeal.
26. Consequently, the summonses dated 15th November, 2023 and 13th February, 2024 are hereby found to be without merit. They are dismissed and each party to bear their own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF SEPTEMBER, 2024.**



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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Weldon Ngetich for the Petitioner

No Appearance for the Applicant

