



REPUBLIC OF KENYA



**In re Estate of the Late David Kimuge Arap Chepkwony alias  
David Kimuge PO Koyer Chepkwony (Deceased) (Succession Cause  
3 of 2015) [2024] KEHC 13380 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13380 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 3 OF 2015  
JK SERGON, J  
OCTOBER 30, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE DAVID KIMUGE ARAP  
CHEPKWONY ALIAS DAVID KIMUGE P.O. KOYER CHEPKWONY (DECEASED)**

**RULING**

1. The application coming up for determination is the summons for rectification of grant dated 21st February, 2024 seeking the following orders;
  - (i) The grant of letters administration intestate issued to the said Loice Bitengo Chepkwony in this matter on the 30th day of June 2015 and confirmed on the 16th day of November, 2016 be rectified in the following respects as provided for by rule 43 (1) of the Probate and Administration Rules;
  - (ii) That land parcel Kericho/KoiyetS.S/318/ - 19.6 Ha be divided amongst the following as follows;
    - a. Willy Kipchirchir Ngeno - 9.8 Ha
    - b. Isaac Maritim Muge - 1.63 Ha
    - c. Dianah Chepkorir- 1.63 Ha
    - d. Emmanuel Kipkorir- 1.63 Ha
    - e. Evans Kipkemoi- 1.63 Ha
    - f. Goffrey Kipsembei Muge- 1.63 Ha
    - g. Joel Kipkemoi Muge - 1.63 Ha
  - (iii) That land parcel Kericho/Koiyet/117 - 12.6 Ha be divided amongst the following as follows;
    - a. Isaac Maritim Muge - 2.1 Ha



- b. Dianah Chepkorir - 2.1 Ha
  - c. Emmanuel Kipkorir - 2.1 Ha
  - d. Evans Kipkemoi - 2.1 Ha
  - e. Goffrey Kipsembei Muge - 2.1 Ha
  - f. Joel Kipkemoi Muge - 1.63 Ha
- (iii) That the costs of this application be provided for.
2. The application is based on the grounds set out on the face of the summons and the facts deponed in the supporting affidavit of Loice Bitengo Chepkwony the applicant herein.
  3. The applicant avers that the deceased died on the 2nd day of November, 2011 and that a grant of letters of administration intestate was made to her and subsequently confirmed on the 16th day of November, 2016.
  4. The applicant avers that Lucia Cherotich Munai her sister -in -law was included as one of the beneficiaries of the deceased and that her sister -in -law died on the 18th day of January, 2022 before she could complete distribution of the estate of the deceased.
  5. The applicant avers that the family of Lucia Cherotich Munai (deceased) appointed Willy Kipchirchir Ngeno to replace Lucia Cherotich Munai (deceased) as a beneficiary of the estate of the deceased.
  6. The applicant avers that it has become imperative that the said Lucia Cherotich Munai be substituted with Willy Kipchirchir Ngeno to enable her to proceed with the distribution of the estate to its completion.
  7. When this matter came up for inter partes hearing, Mr. Kirui Learned Counsel for the applicants urged this court to allow the summons for rectification of grant as the summons were unopposed.
  8. Having considered the application filed by the applicant, the sole issue for determination by this court is whether to allow the application for rectification of the certificate of confirmation of grant dated 16th November, 2016.
  9. On the issue of rectification of the said grant this Court finds that the proposed amendments to the grant to wit the substitution of a deceased beneficiary is beyond the scope envisaged in section 74 of the [Law of Succession Act](#) and under Rule 43 (1) of the Probate and Administration Rules.
  10. The jurisdiction of this court to order for rectification of grant is donated by Section 74 of the [Law of Succession Act](#), which section provides as follows:-“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.” On the other hand Rule 43(1) of the Probate and Administration Rules provides that: - “Where the holder of grant seeks pursuant to 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 and places 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.”
  11. It is therefore clear from the wording of the aforesaid provisions which deal with rectification of grant, that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased’s death and place of death of the deceased.



12. In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR the court stated that; “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...”
13. The scope of rectification envisaged in the [Law of Succession Act](#) is limited and therefore other matters which may substantially affect the grant are best addressed through an application for review of the judgement or on appeal. In any event, this court upon confirmation of grant dated 16th November, 2016 is largely functus officio.
14. Consequently, the summons for rectification of grant dated 21st February, 2024 is hereby dismissed with no orders as to costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 30TH DAY OF OCTOBER, 2024.**

**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Kajaira holding brief for Applicant

