



In re Estate of the Late William Adaji Joshua Ali Wabuha (Deceased) (Succession Cause 44 of 2004) [2024] KEHC 13288 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 44 OF 2004
JK SERGON, J
OCTOBER 30, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
WILLIAM ADAJI JOSHUA ALIWABUHA (DECEASED)**

BETWEEN

JOSEPH NJOROGE GUCHU 1ST APPLICANT

JUSTICE KIPKEMOI 2ND APPLICANT

AND

JENIFFER ATIENO PETITIONER

RULING

1. The application coming up for determination is the summons for rectification of certificate of confirmation of grant dated 2nd June, 2022 seeking the following orders;
 - (i) That the grant of letters administration intestate made to the said Jeniffer Atieno and subsequently confirmed on 11th May, 2005 be rectified as prayed.
 - (ii) That upon confirmation of grant a surveyor visited the land parcel Kericho/Kunyak/48 for the purpose of subdivision and the portion of the 1st applicant Joseph Njoroge Guchu was found to be 0.8 Acres instead of 1 Acre as per the confirmed grant.
 - (iii) That the 1st Applicant's share of 1 Acre be registered directly into the name of the 2nd Applicant Justice Kipkemoi who bought the whole of that share.
 - (ii) That the costs of this application be borne by the Petitioner.
2. The application is based on the grounds stated on the face of it and the facts deponed in the supporting affidavit of Joseph Njoroge Guchu the 1st applicant herein.



3. The 1st applicant avers that he was one of the beneficiaries of the estate of the deceased having bought an acre from him before his demise.
4. The 1st applicant avers that upon confirmation of grant he sold the acre to one Leah Chepkemoi Kipyeko who disposed off the said acre to the 2nd applicant Justice Kipkemoi.
5. The 1st applicant avers that after confirmation of grant a surveyor visited the land parcel Kericho/Kunyak/48 for the purpose of subdivision as per the confirmed grant dated 11th May, 2005 and his share was found to be 0.8 Acres instead of an acre as per the confirmed grant.
6. The 1st applicant avers that the petitioner is the only widow of the deceased and given the fact that he bought an acre of land directly from her late husband, the share of the petitioner should be reduced by 0.2 acres to ensure that the 2nd applicant a bona fide purchaser gets an acre of the deceased's property.
7. The 1st applicant avers that it is imperative for the grant to be rectified so that each beneficiary can get their rightful share.
8. The 1st applicant avers that the 2nd applicant having purchased an acre, would like the said share registered directly into his name and therefore the grant should be rectified to capture that.
9. The matter came up for inter partes hearing and Mr. Bett, Learned Counsel for the applicants urged this court to allow the summons for rectification of grant as the summons were unopposed. There was no representation on the part of the petitioner.
10. Having considered the application filed by the applicant, the sole issue for determination by this court is whether to rectify the certificate of confirmation of grant dated 11th May, 2005.
11. On the issue of rectification of the said grant this Court finds that the proposed amendments to the grant are beyond the scope envisaged in section 74 of the [law of succession](#) and the rule 43 (1) of the [Probate and Administration Rules](#).
12. The jurisdiction of this court to order for rectification of grant is donated by Section 74 of the [Law of Succession Act](#), which provides that:- "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."
13. 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."
14. It is therefore clear from the wording of these 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.
15. 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..."

16. 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 11th May, 2005 is largely functus officio.
17. Consequently, the summons for rectification of certificate of confirmation of grant dated 2nd June, 2022 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

No Appearance

