



**In re Estate of Zakayo Kipnetich Chepkwony alias Kipnetich Cholyo (Deceased)  
(Succession Cause 98 of 2014) [2024] KEHC 2449 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2449 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 98 OF 2014  
JK SERGON, J  
MARCH 12, 2024**

**BETWEEN**

**MARY NGETICH ..... 1<sup>ST</sup> BENEFICIARY**

**THOMAS MABWAI ..... 2<sup>ND</sup> BENEFICIARY**

**SAMSON CHIRCHIR ..... 3<sup>RD</sup> BENEFICIARY**

**AND**

**CECILIA CHEPNGENO CHEPKWONY ..... PETITIONER**

**RULING**

1. The application coming up for determination is a summons for rectification of grant dated 21st July, 2023 seeking the following orders;
  - (i) That the certificate of confirmation of grant dated 4th October, 2017 be rectified as per the consent of the mode of distribution and as per the averments stated in the Applicant's affidavit dated 21st July, 2023.
  - (ii) That the costs of this application be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit of Mary Ngetich on behalf of her co-applicants.
3. The applicants aver that on 24th May, 2017 this Court delivered a judgement on how the estate of the deceased ought to be apportioned among the beneficiaries of the deceased and consequently a certificate of confirmation of grant dated 4th October, 2017 was issued as per the courts judgement.
4. The applicants aver that the entire family had a meeting and unanimously agreed on an alternative mode of distribution of the estate property as follows;

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1st Household

Mary Ngetich.....3.25 Acres

Thomas Kibore Mabwai.....3.25 Acres

Samson Kipkorir Chirchir.....3.25 Acres

2nd Household

Joseph Kimetet Sang.....2.66 Acres

Didacus Kipchirchir Ngetich.....2.66 Acres

Thomas Kiprotich Ngetich.....2.66 Acres

Cicilia Chepngeno.....1.58 Acres

5. The applicants aver that all the beneficiaries signed a consent on the new mode of distribution of the estate and filed it in court and they were therefore seeking that the certificate of confirmed grant issued by this Court on 4th October, 2017 be rectified to reflect the mode of distribution as stated in the filed consent.
6. At the time of writing this ruling the respondent had not filed a replying affidavit in response to the instant application.
7. I have considered the instant application and the sole issue for determination is whether to allow rectification of the certificate of confirmation of grant dated 4th October, 2017 in view of the alternative mode of distribution arrived at by the parties to the instant succession cause. The answer is in the negative. Rectification of grants is provided for in section 74 of the [Law of Succession Act](#), Cap 160, Laws of Kenya and Rule 43(1) of the Probate and Administration Rules.
8. Section 74 of the [Law of Succession Act](#) provides as follows: “Errors in names and descriptions, or in setting forth 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. ” Whereas, Rule 43(1) of the Probate and Administration Rules provides as follows: “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 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.”
9. From the language of section 74 of the [Law of Succession Act](#) and Rule 43(1) of the Probate and Administration Rules, the scope of rectification of grants of representation is limited to errors in names and descriptions, or in setting forth the time and place of the deceased’s death, or the purpose in a limited grant and any such other minor errors in that genre could also be rectified. Other major or substantial issues should be addressed through application for review of Judgment or appeal. See 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 of 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.”



10. In the instant application, I find that rectifying the certificate of confirmation of grant dated 4th October, 2017 to reflect the alternative mode of distribution arrived at by consent of parties, goes beyond the scope envisaged in section 74 of the *Law of Succession Act* and Rule 43(1) of the Probate and Administration Rules. Consequently, the summons dated 21st July, 2023 is dismissed with no orders as to costs. If well advised, the parties should invoke the relevant provisions of law to have the Certificate of Confirmation of Grant Amended.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 12<sup>TH</sup> DAY OF MARCH, 2024.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:

C/Assistant – Rutoh

No Appearance for the Parties

