



**In re Estate of the Late Kipsige langat alias Kipsige Arap langat alias Kipsige s/o Langat
(Deceased) (Succession Cause 124 of 2014) [2024] KEHC 5925 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5925 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 124 OF 2014**

JK SERGON, J

MAY 23, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE KIPSIGE LANGAT ALIAS
KIPSIGE ARAP LANGAT ALIAS KIPSIGE S/O LANGAT (DECEASED)**

IN THE MATTER OF

LOICE CHEPKOECH LANGAT 1ST PETITIONER

LEAH CHERONO LANGAT 2ND PETITIONER

RULING

1. The application coming up for determination is a summons for rectification of grant dated 20th February, 2024 seeking the following orders;
 - (i) That the certificate of confirmation of grant issued on 15th October, 2018 be rectified in the following respects as provided by Rule 43 (1);
 - (a) That Daniel Kipkoech Sigei (deceased) a beneficiary herein be substituted with Chepkirui Hellen Sigei to hold in trust for herself and the dependents of Daniel Kipkoech Sigei.
 - (b) That the schedule of assets be rectified to read as follows;



Name	Description of Property	Shares of Heirs
Loice Chepkoech Langat	L.R. No. Kericho/Kiptere/ 1566	Absolute
Loice Chepkoech Langat	L.R. No. Kericho/Kiptere/ 1850	Absolute
Loice Chepkoech Langat Leah Cheron Langat Chepkirui Hellen Sigei to hold in trust for herself and the dependents of Daniel Kipkoech Sigei	L.R. No. Kericho/Kiptere/ 1574	8.5775 Acres 3.2475 Acres 0.975 Acres

2. The application is supported by grounds on the face of it and the supporting affidavit of Loice Chepkoech Langat the applicant.
3. The applicant avers she and her co administratrix were issued with a grant of letters of administration on 9th October, 2014, the said grant of letters of administration was confirmed on 15th October, 2018 and a certificate of confirmation of grant issued.
4. The applicant avers that in the said certificate of confirmation of grant issued on 15th October, 2018 Daniel Kipkoech Sigei was apportioned 0.975 acres in L.R No. Kericho/Kiptere/1574.
5. The applicant avers that the said Daniel Kipkoech Sigei died on 13th April, 2019 after confirmation of grant and before transmission of the said estate to the rightful beneficiaries.
6. The applicant avers that Daniel Kipkoech Sigei was married to Chepkirui Hellen Sigei and together were blessed with four children who are minors.
7. The applicant avers that since Daniel Kipkoech Sigei is deceased, it is imperative to have him substituted with Chepkirui Hellen Sigei in order to hold the said share of the estate in trust for herself and the dependents of Daniel Kipkoech Sigei (Deceased). The applicant attached the proposed rectification to the schedule of the certificate of confirmation of grant dated 15th October, 2018.
8. The applicant avers that it is desirable that the mode of distribution be rectified by this Court to enable them complete the process of execution of grant.
9. Having considered pleadings, the sole issue for determination by this court is whether to rectify the confirmed grant dated 15th October, 2018.
10. The death of a beneficiary and substitution thereof is not one of the instances envisaged under section 74 of the *Law of Succession Act* and rule 43 (1) of the *Probate and Administration Rules* where rectification can be made. The grant as issued did not have any error or mistakes on names, descriptions, time or place of death of the deceased. As such, it is therefore my view that the grant herein cannot be rectified under the provisions of section 74 of the *Act* or Rule 43 (1) of the *Rules*.



11. In the matter of the estate of *Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR , the Learned Judge was of the opinion that where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the *Law of Succession Act*, the applicant ought to approach the court for review under Order 45 of the *Civil Procedure Rules* which is one of the provisions of the *Civil Procedure Rules* imported into succession practice through Rule 63 of the *Probate and Administration Rules*. This is because both a grant of letters of administration and the certificate of grant are court orders which can only be amended through review and not through an application for amendment of pleadings.
12. In the instant succession cause, it is my opinion that the death of a beneficiary and substitution thereof is a ‘sufficient reason’ within the meaning of Order 45 of the *Civil Procedure Rules*. However, the instant application was also brought under the provisions of Rules 49 and 73 of the *Probate and Administration Rules*. Rule 49 provides that: “A person desiring to make an application to the Court relating to the estate of a deceased person for which no provision is made elsewhere in these rules shall file a summons supported if necessary by affidavit.” Whereas Rule 73 on the other hand provides that: - “Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”
13. Under Article 159 of *the Constitution* of Kenya 2010, this Court is duty bound to administer justice without undue regard to procedural technicalities. The effect of these rules is that a party can file an application which is not otherwise provided for under the rules and the court can entertain the same and invoke its inherent jurisdiction to make such orders as may be necessary for the ends of justice and without undue regard to the form or the procedure a litigant has approached it. It is therefore against such background that this Court can entertain the instant application, the limited scope of section 74 of the *law of Succession Act* and rule 43 (1) of the *Probate and Administration Rules* notwithstanding.
14. Considering all the foregoing, and the proposed amendment, I am of the considered opinion that the orders sought may be granted without affecting the substance and content of the grant. The beneficiaries’ shares will not be affected save for the share of the deceased Daniel Kipkoech Sigei which will go to his wife to hold in trust for herself and the dependents of Daniel Kipkoech Sigei, being his rightful heirs.
15. It is therefore my finding that the application has merit and ought to be allowed, which I hereby do. I hereby grant the following orders:
 - a) That the grant be and is hereby rectified for the share of Daniel Kipkoech Sigei measuring 0.975 acre be bequeathed to Chepkirui Hellen Sigei to hold in trust for herself and the dependents of Daniel Kipkoech Sigei and an amended grant do issue.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY OF MAY, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Sang for the Petitioner

