



In re Estate of the Late Joel Kipkirui Koskei alias Joel Kipkirui Koske alias Chomio Arap Koske (Deceased) (Succession Cause 120 of 2013) [2024] KEHC 5924 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 120 OF 2013**

JK SERGON, J

MAY 23, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE JOEL KIPKIRUI
KOSKEI ALIAS JOEL KIPKIRUI KOSKE ALIAS CHOMIO
ARAP KOSKE (DECEASED)**

AND

**IN THE MATTER OF AN APPLICATION FOR
RECTIFICATION OF THE CONFIRMED GRANT**

AND

IN THE MATTER RULE 43 (1) OF THE PROBATE AND ADMINISTRATION RULES

IN THE MATTER OF

ZACHARIA KIPLANGAT PETITIONER

RULING

1. The application coming up for determination is a summons for rectification of grant dated 12th June, 2023 seeking the following orders;
 - (i) That the certificate of confirmation of grant of letters of administration issued to James Kirui and Zacharia Kiplangat in this matter on 18th July, 2017, be rectified in the following respects as provided for by rule 43 (1) of the *Probate and Administration Rules*;
 - (a) The description of the property of the estate of the deceased be rectified as follows; to include Kericho/Kaplelartet/830 which was inadvertently omitted.
 - (ii) That the costs of this application shall be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of Zacharia Kiplangat the applicant herein.



3. The applicant avers the certificate of confirmation of grant of the said estate was made to him and his co administrator on 18th July, 2017.
4. The applicant avers that his co administrator one James Kirui is now deceased and he is therefore the only dependent, surviving son and beneficiary of the estate of the deceased.
5. The applicant avers that despite him and his co administrator having taken out letters of administration, they failed to list all the properties of the deceased in P&A Form No. 5 to wit Kericho/Kaplelartet/830 measuring 19.5 Ha, which is to be held in trust for all the beneficiaries.
6. The applicant maintains that this Court has wide powers and discretion to entertain and allow this application for rectification in the interest of justice for all beneficiaries.
7. Having considered pleadings, the sole issue for determination by this court is whether to rectify the confirmed grant dated 18th July, 2017. The answer is in the negative. I find that the intended alterations go beyond the scope of rectification as prescribed in section 74 of the Law of Succession and 43 (1) of the *Probate and Administration Rules*. By this summons the administrator is proposing to make fundamental and far reaching changes to the grant under the guise of rectification.
8. The scope of rectification of grants as provided for pursuant to section 74 of the *Law of Succession* and 43 (1) of the *Probate and Administration Rules* is limited and not generic and therefore major or substantive issues should be addressed vide an application for review of judgment or an appeal. *In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR the court stated as follows;

“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....”
9. *In Re Estate of Charles Kibe Karanja (Deceased)* 2015 eKLR the Court held as follows:-

“If there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”
10. Consequently, the summons for rectification of grant dated 12th June, 2023 is hereby dismissed with no orders as to costs.

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

Malel for the Petitioners

