



In re Estate of the Late Kipseron Chumo (Deceased) (Succession Cause 34 of 2019) [2024] KEHC 5726 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 34 OF 2019**

JK SERGON, J

MAY 9, 2024

IN THE MATTER OF THE ESTATE OF THE LATE KIPSERON CHUMO (DECEASED)

BETWEEN

ESTHER CHEPKEMOI SERON APPLICANT

AND

JACKLINE CHEPKOECH PETITIONER

RULING

1. The application coming up for determination is a summons for rectification of grant dated 7th July, 2023 seeking the following orders;
 - (ii) That the grant of letters administration issued to the said Jackline Chepkoech and Esther Chepkemoi Seron in this matter on 30th July, 2020 and confirmed on 21st October, 2021 be rectified to include the bona fide purchasers as liabilities as provided for by order 43 (1) of the *Probate and Administration Rules*.
 - (ii) That the costs of this application be provided for.
2. The application is supported by the grounds set out on the face of it and the affidavit sworn in support of summons for rectification of grant by Esther Chepkemoi Seron the applicant herein.
3. The applicant avers that the deceased died intestate on 16th November, 1998 and the certificate of confirmation of the letters of administration of the said estate were issued to Jackline Chepkoech and Esther Chepkemoi Seron on 21st October, 2021.
4. The applicant avers that the Environment and Land Court in ELC no. E30 of 2021 issued orders dated 2nd February, 2023 that the purchasers should be included as liabilities in the succession cause and should therefore be included in the confirmed grant as the said orders arose out of the adoption of a mediation agreement which was subsequently was adopted as the judgment of the Court.



5. The applicant reiterated that the instant affidavit was made in support of the summons for rectification of grant.
6. The applicant in her capacity as one of the administrators of the estate of the deceased, urged this Court to rectify the confirmed grant to the extent that Evalyne Chebet, Linner Chepkoech, Caroline Cheron, Gladys Chepkoech Chepkwony, Nancy Chepkirui Chepkwony, Eucabeth Chelangat, David Kipkurui Cheruiyot and Chepkorir R. Joyce be included as liabilities of the estate so as to enable them to proceed with the distribution of the estate to its completion.
7. The co - administrator in the instant succession cause filed a replying affidavit in response to the summons for rectification of grant. The replying affidavit was sworn by Jackline Chepkoech the co - administrator or petitioner.
8. The petitioner avers that the succession proceedings were commenced by way of citation and after gazettelement the applicant did not object to the said grant being given to her solely and only appeared when she filed the mode of distribution of the estate and she conceded to the applicant being incorporated as a co administrator.
9. The petitioner contended that the applicant was seeking to include intruders and/or strangers to the estate who had illegally occupied their father's land and refused to vacate despite having filed an ELC Cause No. E030 of 2021 in which the said intruders were told to allow the confirmed grant to be executed as ordered. The petitioner maintained that the intent of the summons for rectification of grant was to scuttle the distribution of the estate as the applicants are settled in most of the property to the detriment of the other beneficiaries.
10. The petitioner on her part urged that she should be allowed to amend the petition to include other beneficiaries disclosed by the applicant and to include other properties of the deceased that had been left out. The petitioner therefore urged this Court to give directions for confirmation of grant given the circumstances of the case, in the interests of justice in order for fairness and equity to prevail.
11. Esther Chekemoi Seron, the applicant herein, filed a further affidavit in support of the rectification of grant filed in response to replying affidavit filed by Jackline Chepkoech on 7th July, 2023. The applicant avers that they are both co-administrators of the estate of the late Kipseron Chumo.
12. The applicant vehemently denied the assertion by Jackline Chepkoech, her co-administrator, that the intention of the application for rectification is to include intruders who have illegally occupied her father's land and refused to vacate. She maintained that this assertion was false and misleading. The applicant avers that the matter regarding the illegal occupation of land was concluded and judgment issued in Kericho ELC Case Number E030 of 2021 and the court pursuant to mediation proceedings ordered that the third party purchasers be included in the succession proceedings as liabilities to the estate.
13. The applicant avers that the mediation proceedings were conducted transparently and without coercion and all parties including the petitioner/respondent, had the opportunity to participate voluntarily. The applicant further avers that the mediation agreement was duly signed by all parties including the petitioner/respondent.
14. The court directed the parties to file written submissions.
15. The applicant filed her written submissions in which she reiterated that the mediation process was transparent and that the mediation agreement reached by the parties was duly signed and adopted as an order of the court. Therefore the terms of the mediation agreement, including those pertaining to the inclusion of the liabilities in the succession proceedings ought to be upheld by the probate Court. The



- applicant relied on the case of *Alias Finance Kenya Limited v Country Farms Limited* (Civil Appeal No. E005 of 2020) [2022] in which Justice J. Kamau reiterated on the validity and enforceability of mediation settlement agreements in Kenya. In this case the Learned Judge pronounced herself on the finality and enforceability of mediation settlement agreements provided that there are no vitiating factors such as misrepresentation, mistake, coercion, undue influence or duress. The applicant contended that the petitioner/respondent failed to demonstrate any of the above listed vitiating factors.
16. The applicant maintained that rectification of the grant in the instant succession cause was imperative in ensuring the fair and efficient administration of the estate of Kipseron Chumo.
 17. The respondent filed her written submissions and maintained that the instant application was calculated to circumvent the law in favour of third parties who were not liabilities to the estate of late Kipseron Chumo at the expense of the rightful beneficiaries of the estate of the late Kipseron Chumo.
 18. The respondent argued that the application for rectification was calculated to scuttle the instant succession proceedings and to disinherit the petitioner/respondent who moved this Court by way of citation.
 19. The respondent argued that the copy of the order emanating from the Environment and Land Court was obtained by fraud and had been challenged for not conforming with what the mediator proposed. The mediator proposed that the parties proceed as per the confirmed grant and each party to accommodate the purchaser upon proving their claim.
 20. The respondent maintained that it was not disputed that the purported liabilities did not buy land from the deceased person but rather from the grandsons of the deceased, who had no stake to give out what they did not have and therefore any purported contract entered into ought to be treated as an illegal and void contract.
 21. The respondent cited section 45 of the *Law of Succession Act* which prohibits intermeddling with the free property of a deceased person and the case of the Estate of M. Ajogi M Ikiugu alias Ikiugu Ajogi (Deceased) in which on the sale of estate before confirmation of grant, the court stated that under section 82 (b) (ii) of the *Law of Succession* sale of immovable property of the estate before confirmation of grant is prohibited and held that any attempted sale of immovable property of the estate before confirmation of grant shall be null and void for all purposes and intents.
 22. The respondent contended that the estate property was agricultural land and therefore consent is a mandatory requirement under section 6 under the *Land Control Act*, Cap 302 and cited *Gitanga Mwangi & Another v Annunciata Waitbera Kibue* Milimani Law Courts ELC 541 of 2009 in which it was held; that plots in Muguga/Kanyariri are agricultural land and therefore controlled transactions affecting those plots were void for all purposes in the absence of such consent.
 23. The respondent submitted that 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. The respondent cited the case of the *Estate of Geoffrey Kinuthia Nyamwanga (deceased)* [2013] eKLR where the court stated as follows;

“the law on rectification or alteration of grant in section 74 of the *Law of Succession Act* and rule 43 (1) of the *Probate and Administration Rules*...what these provisions mean is that errors may be rectified by the court where they relate to names and descriptions or setting out of the time and 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...”

24. Having considered pleadings and submissions herein, the sole issue for determination by this court is whether to rectify the confirmed grant dated 21st October, 2021. 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 filing this summons the administrator is proposing to make fundamental and far reaching changes to the grant under the guise of rectification. Whereas this Court is cognizant of the orders of the Environment Land Court vide Kericho ELC Case Number E030 of 2021, the nature of prayers sought by the applicant obviously go beyond the spectrum of section 74 of the *Law of Succession Act* and rule 43 (1) of the *Probate and Administration Rules*.

25. *In Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR the Court held as follows:

“...If a party wishes to have the assets of the estate redistributed or 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 for 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 effected 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. The remedy of review of court orders is not directly provided for in the *Law of Succession Act* and the *Probate and Administration Rules*, but it is imported into probate and practice by Rule 63 of *Probate and Administration Rules*, which has adopted a number of procedures from the *Civil Procedure Rules*.”

26. *In re Estate of Nganga Kamau (Deceased)* (Succession Cause 432 of 2015) [2024] the court observed as follows;

“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. I may add that 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.” {emphasis mine}

27. In conclusion, I find no merit in this application. The summons for rectification of grant dated 7th July, 2023 is dismissed in its entirety. This being a family matter each side will meet its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF MAY, 2024.

J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

W. K. Ngeno for 1st Petitioner/Respondent

Kirui holding brief for Motanya for 2nd Petitioner/Applicant

