



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of the Late James Kimutai Cheriro (Deceased) (Succession Cause 77 of 2008) [2024] KEHC 7389 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7389 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 77 OF 2008  
JK SERGON, J  
JUNE 19, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE JAMES KIMUTAI CHERIRO (DECEASED)**

**AND**

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

**AND**

**UNDER SECTION 74 AND RULE 43 (1) OF THE PROBATE  
AND ADMINISTRATION RULES, CAP 160 LAWS OF KENYA**

**RULING**

1. The application coming up for determination is a summons for rectification of grant ex parte dated 1st February, 2024 seeking the following orders;
  - (i) That the grant of letters of administration issued to the said Linah Chebet Cheriro And Erick Kipkemoi Mutai in this matter on the 13th day of September, 2013 and confirmed on the 12th day of November, 2013 be rectified in the following respects as provided by rule 43 (1) of the *Probate and Administration Rules*:-
  - (ii) That the name of Linah Chebet Cheriro be omitted and replaced by Erick Kipkemoi Mutai.
  - (iii) That the measurement of land parcel known as L.R No. 631/444 Kericho Municipality be amended to reflect the measurement of 0.0255 Ha.
  - (iv) That Land Parcel I.R 2138 - 788 Acres to be included and to be transferred in the name of Erick Kipkemoi Mutai.
  - (v) That the cost of this application be provided for.



2. The application is supported by grounds on the face of it and the supporting affidavit of Erick Kipkemoi Mutai 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 Linah Chebet Cheriro (now deceased) on 6th May, 2010, confirmed on 13th September, 2013 and rectified on 12th November, 2013.
4. The applicant avers that the late Linah Chebet Cheriro was his mother and co-administrator of the estate of the deceased, she died on 10th June, 2016 before they could complete the distribution of the estate of the deceased.
5. The applicant avers that it is imperative that the said Linah Chebet Cheriro be removed from the grant to enable him to proceed with the distribution of the estate to its completion.
6. The applicant avers that the supporting affidavit was made in support of his application for the amendment of the rectified certificate of confirmation of grant dated 12th November, 2013.
7. The applicant avers that he is seeking the following amendments; an appointment as the sole administrator, that the measurement of land parcel known as L.R No. 631/444 Kericho Municipality be amended to reflect the measurement of 0.0255 Ha instead of 155ft\*17ft (he attached a copy of the allotment letter) and that land parcel I.R No. 2138 be included on the confirmed grant to facilitate completion of the succession proceedings (he attached a copy of the certificate of search in respect to the said parcel).
8. Having considered pleadings, the sole issue for determination by this court is whether to amend the rectified certificate of confirmation of grant dated 12th November, 2013. 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 Act* 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 to wit substitution of a deceased administrator and beneficiary and the inclusion of new assets as part of the estate of the deceased under the guise of rectification.
9. 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...”
10. 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.”



11. Consequently, the summons for rectification of grant dated 1st February, 2024 is hereby dismissed with no orders as to costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF JUNE, 2024.**

**J.K. SERGON**

**JUDGE**

In the Presence of:

C/Assistant – Rutoh

No Appearance for the Parties

