



**In re Estate of the Late David Kiplangat alias David Koskey (Deceased)
(Succession Cause 30 of 2016) [2024] KEHC 9481 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 30 OF 2016**

JK SERGON, J

JULY 25, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE DAVID
KIPLANGAT ALIAS DAVID KOSKEY (DECEASED)**

BETWEEN

GRACE CHEBET KOSKE 1ST PETITIONER

FREDRICK KIPKOECH LANGAT 2ND PETITIONER

VINCENT LANGAT 3RD PETITIONER

KENNETH CHERUIYOT LANGAT 4TH PETITIONER

AND

CHRISTINE CHEPKIRUI MOSONIK APPLICANT

RULING

1. The application coming up for determination is a summons for rectification of grant dated 16th January, 2024 seeking the following orders;
 - (i) That a fresh grant do issue in the joint names of the petitioners and the objector Christine Chepkirui Mosonik as ordered by this honourable court on 19th July, 2018.
 - (ii) That the court be pleased to rectify the certificate of confirmation of grant made on the 31st July, 2023 so as to conform with the grant issued in terms of prayer (i) and in order to incorporate the following amendments:- The funds held at Barclays Account No. 0098243941 to be used for payment of legal fees and stamp duty and any surplus be shared amongst all the dependants of the deceased as follows; 58.8% to be held by Grace Chebet Koske to hold in trust in equal shares for herself and her children and 41.2% to be held by Grace Chebet Koske to hold in trust in equal shares for herself and her children



- (iii) That this honourable court do grant orders directing the Deputy Registrar of this honourable court to execute all the necessary transfer forms so as to effect a final distribution of the estate of the deceased to its rightful beneficiaries.
 - (iv) That this Honourable Court do grant the applicant Christine Chepkirui Mosonik orders to execute such necessary documents in the deceased's account number 0098243941 held at Barclays Bank (now Absa) to enable her withdraw funds and settle outstanding legal fees and/or stamp duty arising from the administration of the estate of the deceased.
 - (v) That necessary directions be made.
 - (vi) That the costs of this cause and the costs of the survey exercise be borne by the estate of the deceased.
2. The application is supported by grounds on the face of it and the supporting affidavit of Christine Chepkirui Mosonik the applicant herein.
 3. The applicant avers that she is one of the co-administrators of the estate of the deceased by virtue of a ruling delivered by this Court on 19th July, 2018. The applicant further avers that despite being enjoined as an administrator of the estate, a fresh grant to confirm her status was never issued.
 4. The applicant avers that she was advised by her advocates on record that by inadvertence on their part, they failed to make a prayer seeking her enjoinder as a co-administrator and therefore the certificate of confirmation of grant issued by this court on 31st July, 2023 did not bear her name.
 5. The applicant avers that it is within her knowledge that her co-administrators who are all from the first house are completely hostile and were unwilling to recognize her and her children.
 6. The applicant reiterated that she is seeking orders directing the Deputy Registrar to execute all the requisite forms in order to ensure final distribution of the deceased's estate.
 7. The applicant reiterated that for ease of the administration of the estate of the deceased, she was seeking orders to access and execute the necessary documents in the deceased account at Absa Bank (formerly Barclays Bank) for purposes of settlement of legal fees and stamp duty and if there be any surplus the same be shared among the dependants of the deceased.
 8. The respondents filed a replying affidavit in response to the application, the replying affidavit was sworn by Grace Chebet Koske an administrator of the estate and on behalf of the co-administrators and respondents herein.
 9. The respondents aver that the amendments contemplated are central and far reaching as they proposed to include a new mode of distribution and new beneficiaries and the same was not agreeable to the parties. The respondents aver that rectification of grant is provided for under section 74 of the *Law of Succession Act* in order to correct a misdescription of property or a name which is not fully and properly described in the grant. Whereas rule 43 of the *Probate and Administration Rules* provides that rectification of a grant is only permissible to cure minor errors, mistakes and irregularities in the grant and therefore rectification cannot be used to fundamentally alter the character of the grant.
 10. The respondents aver that there was no consent from the other beneficiaries that Christine Chepkirui Mosonik holds shares held at KCB Bank Limited plus dividends accruing therefrom absolutely. This would significantly alter the distribution in the original grant to only benefit the applicant and this was prejudicial to the other beneficiaries.



11. The respondents aver that the applicant wants some of the assets in the bank initially shared among the beneficiaries to be used to settle their advocates' costs. This was in bad faith as it alters the mode of distribution to the detriment of other beneficiaries. This is not contemplated in rectification of grant.
12. The respondents aver that the sweeping changes proposed to be made by the summons do not fall under the scope of rectification under section 74 and that the applicant was proposing to make fundamental and far reaching changes to the grant under the guise of rectification.
13. The respondents aver that it is imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant, whereby the contemplated changes are fundamental not superficial and go to the core of distribution as these cannot be effected without touching the orders made by the court at distribution of the estate. The respondents further aver that such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant and that the proper approach ought to be an application for review of the orders made at the confirmation of the grant.
14. The respondents aver the applicant therefore ought to apply to revoke the original grant and apply that the same be re-issued with the proposed changes in the mode of distribution of the estate and the consent of all the beneficiaries must be obtained once again. The respondents therefore urged this Court to dismiss the summons for rectification of grant with costs.
15. Having considered pleadings, the sole issue for determination by this court is whether to rectify the certificate of confirmation dated 31st July, 2023 in line with the amendments proposed by the applicant/objector.
16. On the issue of rectification, having considered the material before this Court, I find that the applicant on her part is seeking to have some of the assets in the bank initially shared among the beneficiaries to be used to settle legal fees and stamp duty. The respondents on their part argue that this is in bad faith as it alters the mode of distribution to the detriment of other beneficiaries. The respondents are adamant that the amendments contemplated in the summons for rectification are central and far reaching as they proposed to include a new mode of distribution and new beneficiaries and the same was not agreeable to the parties. I am in concurrence with the respondents that the contemplated changes are fundamental not superficial, they are beyond the scope of section 74 of the [Law of Succession Act](#) and rule 43 (1) of the [Probate and Administration Rules](#) and go to the core of distribution as these cannot be effected without touching the orders made by the court at distribution of the estate.
17. 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 such other minor errors in that genre could also be rectified. Other major or substantial issues should be addressed through application for review of judgement 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 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..."
18. The applicant stated that she was enjoined as an administrator of the estate vide a ruling of this Court and that a fresh grant to confirm her status was never issued and consequently the certificate of confirmation of grant issued by this court on 31st July, 2023 did not bear her name, she was therefore



seeking to have her name included in the rectified grant. *In the matter of the estate of Hasalon Mwangi Kabero* [2013] eKLR where the court stated: “when dealing with an application for rectification of grant to add a full name of a person who was omitted.” An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant... It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.”

19. I also note that there were other substantial amendments that were sought, moreso, in respect to the shares of bank accounts operated by the deceased in his lifetime and I find that the proposed amendments would alter the mode of distribution to the detriment of other beneficiaries. *In re Estate of Henry Mwithimbu Karigu (Deceased)* [2020] eKLR the court observed as follows; “It bears repeating that the scope of rectification of grant under section 74 of the *Law of Succession Act* is quite limited and cannot handle such substantial issues which may require further evidence or visit to the locus in quo or interrogation by an appellate court. Perhaps, a proper application for review of judgement or appeal is the way out of this quagmire.”
20. Consequently, the summons for rectification of grant dated 16th January, 2024 is hereby dismissed with no order as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 25TH DAY OF JULY, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Sang for the Petitioners

No appearance for the Respondent

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