



REPUBLIC OF KENYA



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**In re Estate of the Late Daniel Chebokoros Albert Rowlands Koech (Deceased)
(Succession Cause 110 of 2006) [2024] KEHC 12029 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 110 OF 2006
JK SERGON, J
OCTOBER 9, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE DANIEL
CHEBOKOROS ALBERT ROWLANDS KOECH (DECEASED)**

RULING

1. The application coming up for determination is a notice of motion seeking rectification of grant dated 24th October, 2023 seeking the following orders;
 - (i) That the certificate of confirmation of grant issued to the said Anne Cherono Koech And Arnold Kipngetch Bett in this matter on 16th May, 2007 be rectified in the following respects as provided for by rule 43 (1) of the Probate and Administration Rules.
 - (a) The property title no. NAIROBI/BLOCK/72/1945 be removed from the list of properties forming part of the estate of the deceased
 - (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 Anne Cherono Koech, one of the administrators of the estate and the applicant herein.
3. The applicant avers that the certificate of confirmation of grant of the estate of the deceased was made to ANNE CHERONO KOECH and ARNOLD KIPNGETCH BETT on 16th May, 2007 and that the said grant contains an error as to the property title no. NAIROBI/BLOCK/72/1945 being included in the list of properties forming part of the estate of the deceased.
4. The applicant avers that the deceased was her husband and that the above mentioned property was jointly purchased by herself and the deceased and therefore should have passed on to her automatically as the surviving owner and spouse and should not have been subject to succession proceedings. The applicant attached a copy of the title to the property which is solely registered in her name and receipts as evidence that she had contributed towards acquiring the subject property.
5. The applicant avers that it is therefore desirable that the aforementioned error be rectified by this Court.



6. The application for rectification is unopposed.
7. Having considered the application filed by the applicant, the sole issue for determination by this court is whether to rectify the certificate of confirmation of grant dated 16th May, 2007.
8. On the issue of rectification of the said grant this Court finds that the proposed amendments to wit the removal of property title no. NAIROBI/BLOCK/72/1945 from the list of properties forming part of the estate of the deceased are beyond the scope envisaged in section 74 of the law of succession and the rule 43 (1) of the Probate and Administration Rules. The jurisdiction of this court to order for rectification of grant is donated by Section 74 of the Law of Succession Act, the said section provides that:- “Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.” On the other hand Rule 43(1) of the Probate and Administration Rules provides that: - “Where the holder of grant seeks pursuant to provisions of Section 74 of the Act, rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time and places of death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form110 for such rectification through the registry and in the cause in which the grant was made.”
9. It is therefore clear from the wording of these provisions which deal with rectification of grant, that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased’s death and place of death of the deceased.
10. In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR the court stated that; “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...” The scope of rectification envisaged in the Law of Succession Act is limited and therefore other matters which may substantially affect the grant are best addressed through an application for review of the judgement or on appeal.
11. Consequently, the summons dated 24th October, 2023 is found to be without merit. It is dismissed with no orders as to costs.

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

J.K. SERGON

JUDGE

In the Presence of

C/Assistant – Rutoh

No Appearance for Parties

