



**In re Estate of Kipsoi Cheramgoi (Deceased) (Succession Cause
137 of 2005) [2024] KEHC 15382 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15382 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 137 OF 2005
JK SERGON, J
DECEMBER 5, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE KIPSOI CHERAMGOI DECEASED

BETWEEN

SALLY CHEPKEMOI SANG PETITIONER

AND

JANE CHEBILA SANG APPLICANT

RULING

1. The application coming up for determination is a summons for revocation of rectified grant dated 13th June, 2024 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) Spent
 - (iv) Spent
 - (v) That the rectified grant be revoked.
 - (vi) That the costs of this application be provided for.
2. The application is supported by grounds set out on the face of it and the facts deponed in the supporting affidavit of Jane Chebila Sang the applicant herein.
3. The applicant avers that on 7th April, 2024 this Court issued a certificate of confirmation of grant which by consent of all beneficiaries had a comprehensive mode of distribution.



4. The applicant avers that on 6th May, 2024 this Court issued a certificate of rectified grant based on an application made by Sally Chepkemoi Sang the petitioner herein wherein the mode of distribution was amended.
5. The applicant avers that she never signed any consent or attended court to confirm the rectification and that all documents in support of the rectification were forged.
6. The applicant avers that if the rectified grant is executed, she will be disinherited and stands to suffer irreparably.
7. The applicant avers that the petitioner/respondent will not be prejudiced if the orders sought are granted.
8. The applicant therefore urged this court to set aside the rectified grant and reinstate the certificate of confirmation dated 7th April, 2024.
9. Sally Chepkemoi Sang, the petitioner herein, filed a response. She avers that the summons for revocation of the rectified grant dated 13th June, 2024 is an abuse of court process, vexatious, frivolous and ought to be dismissed in the first instance.
10. She avers that the succession proceedings herein began in the year 2005 wherein a grant of letters of administration intestate was issued by Lady Justice Martha Koome (as she then was) and since then, they have been in and out of court for almost fifteen years at the behest of the applicant herein.
11. She avers that the rectified grant issued on the 6th May, 2024 was not obtained fraudulently rather that it was issued after intense discussions and consent by all the family members, the applicant included.
12. She avers that there were discussions between family members and the entire clan where it was resolved that there was an error in awarding any other person save for herself a portion of land in the parcel known as L.R No. Kericho/Kiptere/3459 and attached a copy of the minutes of the meeting of clan elders held on 1.3.2024.
13. She avers that the applicant signed the consent to the rectification freely and voluntarily and it is therefore unfortunate that she seems to reprobate her signature.
14. She avers that whereas the applicant alleged fraud in obtaining the rectified grant dated 6th May, 2024, she had not particularised or indicated the alleged fraud with precision as is required by the law.
15. She avers that the applicant, having voluntarily executed the consent to rectify the grant, without coercion, cannot therefore claim that the rectified grant was fraudulently obtained.
16. She avers that it is not true that the applicant will be rendered destitute if the rectified grant is allowed to stand, she maintained that the applicant was fully and adequately provided for.
17. She avers that during the lifetime of the deceased, he made advance gifts to some of his dependants as hereunder;
 - a. Andrew Kibet Sang - 6.99 acres comprised in L.R. No Kericho/ Sorget/Kalyet Block 1/73 - 7.71 acres comprised in L.R. No Kericho/ Sorget/Kalyet Block 1/28
 - b. The Applicant, Jane Chebila Sang and her son Micheal Cheruiyot - 5 acres comprised in L.R. No. Kericho/Kabianga/1166
 - c. The Applicant, Jane Chebila Sang - 3.9 acres comprised in L.R. No. Kericho/Sosiot/41



- d. The Applicant, Jane Chebila Sang - 1 acre of very prime land comprised in L.R. No. Kericho/Kabianga/1180
18. She avers that during the lifetime of the deceased, Jane Chebila, the applicant herein sold approximately 10 acres of prime land of the above parcels of land which were advanced to her by the deceased but were registered in the name of her late husband (a son to the deceased).
 19. She avers that during the lifetime of her husband who was an engineer, they educated the entire family including the Applicant's children moreso Micheal Cheruiyot and took responsibility of the entire family which she has continued to do as most of the members are unable to fend for themselves.
 20. She avers that her brother-in-law, Andrew Sang is currently sick and bedridden and most of the medical expenses have been taken care of by herself.
 21. She avers that in view of the foregoing, they held a family meeting and agreed that they had made an error in awarding shares of the estate to any other person save for herself in that parcel composed in L.R. No. Kericho/Kiptere/3459 and the same is supported by the affidavits of Leah Chepkemei, Sarah Cheron and Andrew Kibet Sang who had been previously allocated a share in the said parcel, they voluntarily ceded their share and surrendered the same to the rightful beneficiary Sally Chepkemioi, the petitioner herein and that the said resolution was pursuant to intense discussions and consent of all family members, the applicant included.
 22. She therefore urged this Court to disallow the application to allow the parties to conclude distribution of the estate.
 23. This court directed the parties to file their written submissions, however, at the time of writing this ruling, only the petitioner had complied.
 24. The petitioner reiterated that the entire family and the clan met and deliberated at length and it was agreed that the petitioner should inherit the parcel of land comprising L.R. No. Kericho/Kiptere/3459 since all other beneficiaries were all provided for by the deceased. The petitioner reiterated that the same is buttressed by the affidavit of all the beneficiaries who were all agreeable to the mode of distribution in the rectified certificate, the applicant included voluntarily signed a consent to the rectification. The beneficiaries ceded their shares of the estate of the deceased to the petitioner in the aforesaid family and clan meetings.
 25. The petitioner contended that whereas the applicant alleges that the signature on the consent to rectify the grant is a forgery, she failed to demonstrate that her signature was forged.
 26. The petitioner cited *In Re Estate of Michael Kipkosgei Kurgat (Deceased)* [2021] eKLR where the court had a chance to evaluate the evidence of parties who come to court claiming forgery in order to delay a matter. In the said matter the court observed as follows; "The objector has alleged that the grant and subsequent confirmation was obtained fraudulently. Other than stating that his signature was forged, he did not offer any concrete evidence to prove the serious allegation. He bore the burden of proof and should have been more vigilant..."

Courts of law do not act on impulse or imagination that something may have occurred. The applicant/objector had the onus to establish on a balance of probabilities that forgery of his signature occurred. No evidence whatsoever was tendered by the objector to the said effect."
 27. The petitioner maintained that the applicant has not laid out any iota of fact or proof that her signature was forged.



28. The petitioner contended that the applicant had not demonstrated any of the grounds set out in section 76 of the *Law of Succession Act*.
29. The Petitioner cited the case of *In re Estate of Mukhobi Namonya (Deceased) [2020] eKLR* where the court observed as follows; “Under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.”
30. I have considered the application, response and submissions by the parties and I find that the sole issue for determination is whether this court should revoke the certificate of rectified grant issued by this Court on 6th May, 2024. This court having considered the material placed before in finds the application for rectification of grant was made which led to the removal of the name of the applicant as a beneficiary and her share of the estate of the deceased given to the Petitioner.
31. It is apparent that the applicant was disinherited by the Petitioner through an application for rectification of the grant.
32. It is trite law that the law of rectification was meant to rectify minor errors and not to remove confirmed beneficiaries and allocate their shares to other beneficiaries.
33. This court finds the actions of the Petitioner to be selfish and ill intended.
34. The application for rectification of grant went beyond the sphere of correcting minor errors. In the circumstances, the court must step in correct the injustice visited upon the applicant.
35. This Court is convinced that the instant application has merit. Consequently, the rectified grant is set aside and or revoked. The Certificate of Confirmation of Grant dated April 7, 2024 is reinstated.
36. This being family dispute, a fair order on costs is that each party should meet its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 5TH DAY OF DECEMBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Langat

Morata holding brief for Mwita for Respondent

Kiprono for the Applicant

