



REPUBLIC OF KENYA



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

**In re Estate of the Late Moriongeni Kogo (Decesaed) (Succession Cause 194 of 1998) [2025] KEHC 13859 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13859 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 194 OF 1998  
RN NYAKUNDI, J  
OCTOBER 6, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE MORIONGENI KOGO (DECEASED)**

**RULING**

1. What is pending before this Court for determination is Summons for Rectification of Grant dated 8<sup>th</sup> August 2025 brought pursuant to section 74 & 84 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules* where the Applicant is seeking the following orders that;
  - a. The grant of letters of Administration intestate issued to the said Rosebella Jemutai Kogo in this matter on 9/07/2024 be rectified in the following aspects as provided for by Rule 43 (1) of the *Probate and Administration Rules*:
    - a. The land on the title Block 2 (ziwa) 243 is slightly less than what was initially subdivided; therefore, the beneficiaries had a slight decrease. That is: -
      - a. Rosebella Jemutai Kogo reduced to 3.70 Acres instead of 4.4 Acres
      - b. William Keino Chepkuto reduced to 3.1 Acres instead of 3.0 Acres
      - c. Micah Kipkurgat reduced to 1.88 Acres instead of 2.0 Acres.
    - b. Costs of this application be provided for.
2. The summons is supported by the annexed affidavit sworn by Rosebella Jemutai, the Applicant herein who avers as follows;
  - a. That a grant of letters of administration intestate was made to us by this Honourable Court on the 3/9/2021 and rectified on 5/3/2025.
  - b. That the said grant contains errors as to: -
    - a. The land on the title is slightly less than what was initially subdivided, therefore, the beneficiaries had a slight decrease.
  - c. That I wish to amend the Certificate of Confirmation of Grant due to the following reasons: -



- a. The land on the title Block 2 (ziwa) 243 is slightly less than what was initially subdivided; therefore, the beneficiaries had a slight decrease. That is: -
  - a. Rosebella Jemutai Kogo reduced to 3.70 Acres instead of 4.4 Acres
  - b. William Keino Chepkuto reduced to 3.1 Acres instead of 3.0 Acres
  - c. Micah Kipkurgat reduced to 1.88 Acres instead of 2.0 Acres.
  - d. That the amended takes cognizance of the interests of all the beneficiaries.
  - e. That the amendment does not reduce the actual entitlement given to any of the beneficiaries.
  - f. That it is desirable that the above errors be rectified by the Court.

### **Analysis and Determination**

3. I have read and considered the summons and the affidavit in support of the same. There is one issue for determination namely: -

### **Whether the summons for rectification of grant are merited?**

4. Rectification of a grant is a legal process under Section 74 of the [Law of Succession Act](#) and Rule 43 of the Probate and Administration Rules, which allows the court to correct minor specific errors in a grant of representation or a certificate of confirmation. Courts have held that an error is essentially a mistake. That mistake, however, must fall within the ambit of Section 74 of the [Law of Succession Act](#) and Rule 43 of the Probate and Administration Rules. Under the [Law of Succession Act](#), rectification is appropriate only where the grant contains:
  - a. Errors in names or descriptions of persons or things;
  - b. Errors in setting forth the time and place of the deceased's death;
  - c. Errors regarding the purpose of a limited grant.
5. Specifically, the jurisdiction of the court to order for the rectification of grant is provided for in section 74 of the [Law of Succession Act](#). The Section provides: -
 

“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.”
6. The marginal notes under the section states that errors may be rectified by the Court. On the other hand, Rule 43(1) of the [Probate and Administration Rules](#) provides: -
 

“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 Form 110 for such rectification through the registry and in the cause in which the grant was made.”
7. From the wording of these provisions which deal with rectification of grant, it is clear 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. In general terms rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors are what rectification seeks to address. *In the matter of the Estate of Geoffrey Kinuthia Nyamweinga deceased* [2013] eKLR 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 of the time or place of 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...”

Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the *Law of Succession Act*, the applicant ought to approach the court under order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this Provision-Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”

8. The threshold question is whether the alleged discrepancy in acreages is an error or misdescription within the scope of section 74 of the *Law of Succession Act* or whether the applicant seeks a substantive re-allocation of estate entitlements which would require a different remedy for example review of the confirmation orders or an application under other rules such as the *Civil Procedure Rules*. On the material presented to this Court at the hearing the following is apparent that the Applicant deponed that the land on title BLOCK 2 (ZIWA) 243 is “slightly less” than the acreage initially shown and she gives precise alternative acreages for three named beneficiaries. The Applicant further deponed that the rectification is to correct an error in the certificate and that it does not reduce any beneficiary's actual entitlement.
9. Having noted that there is no opposition to the said summons for rectification, I find that the error on the acreage of this property which was erroneous is an error which this court can rectify as per the provisions of section 74 of the *Law of Succession Act*. In view of the foregoing, I make the following orders in the interests of justice: -
  - a. The grant issued on the 5<sup>th</sup> day of March 2025 be and is hereby rectified to indicate as follows;

Schedule

Land Parcel No Block 2 (ziwa) 423

Beneficiary	Share
Rosebella Jemutai Kogo	3.70 Acres
William Keino Chepkuto	3.1 Acres
Micah Kipkurgat	1.88 Acres



- b. A rectified Grant to issue with the changes in clause (a) above.
- c. There shall be no order as to the costs.
- d. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 6<sup>TH</sup> DAY OF OCTOBER 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

