

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO 260 OF 2015

**IN THE MATTER OF THE ESTATE OF THE LATE CHEROP CHESOO ALIAS
KIPROP CHESOO (DECEASED)**

THROUGH

JOHN **CHEROP**
CHESOO.....PETITIONER/APPLICANT

VERSUS

JOSEPH **KIPKURGAT** **CHESOO.....**
RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Tarigo & Co. Advocate
M/s Kigen & Ng’etich & Co. Advocates

RULING

1. Before this court is Summons for Rectification dated 16th March 2026 expressed to be brought under Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules where the Petitioner/Applicant seeking the following orders: -
 - a. *Spent.*
 - b. *This Honourable Court be pleased to rectify/amend the date of issuance of grant appearing on Certificate of confirmation to read 19th April, 2016 instead of 6th September, 2018.*
 - c. *The costs of this application be in the cause.*
2. This application is based on the following grounds:
 - a. That, the Grant of Letters of Administration intestate was issued to the Petitioner/Applicant on 19th April, 2016 or thereabouts and the certificate of confirmation was later issued on 27th October, 2020.

- b. That, there is a discrepancy on the face of the Certificate of Confirmation, which cites on 6th September, 2018 instead of 19th April, 2016.
 - c. That Petitioner/Applicant needs to do transfer and the dates appearing on Certificate of Confirmation are not matching as required, and there is need to rectify/amend the Certificate of conformation before the estate is transmitted.
 - d. That it is only prudent and fair that the Petitioner/Applicant Summons for confirmation be rectified to enable him do the transmission of the estate.
 - e. That unless the Certificate of Confirmation issued to the Petitioner/Applicant who is also the beneficiary of the estate, stands to suffer irreparable damage.
 - f. That is in the interest of justice that this application be allowed
 - g. That no one shall suffer any prejudice should this application be allowed.
3. In support of the application is the annexed affidavit of John Cherop Chesoo who deponed as follows:
- a. *I am the above-named male adult of sound mind and disposition and the Petitioner/Applicant herein, hence competent enough to make and swear this affidavit.*
 - b. *That Grant of Letters of Administration of the said estate was Issued to me in this matter sometimes on 19th April, 2016 or thereabouts and confirmed on 27th October, 2020.*
 - c. *That, the estate of deceased was confirmed on 27th October, 2020.*
 - d. *That a clerical discrepancy exist on the face of Certificate of Confirmation as the grant was issued to me on 19th April, 2016 and confirmed on 27th October, 2020, but the Certificate of Confirmation indicates that the Grant was issued on 6th September, 2018.*

- e. *That, there is need to further amend and/or rectify the Certificate of confirmation to ensure all dates are corrected for the purposes of smooth transmission of estate.*
- f. *That it is in the interest of justice that this application be allowed.*
- g. *That, this application has been brought promptly and timely and the same be allowed as prayed.*

Decision

4. Rectification of Grants is provided for in section 74 of the Law of Succession Act, Cap 160 Laws of Kenya and Rule 43(1) of the Probate and Administration Rules. Section 74 provides as follows: -

“74. Errors may be rectified by court:

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, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

5. Rule 43(1) provides as follows:

“Where the holder of a grant seeks pursuant to the 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 or place 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.”

6. From the language of section 74 and Rule 43(1), the scope of rectification of grants of representation is limited to errors in names and descriptions of property. The rectification sought in the Summons therefore falls outside the ambit of the aforementioned provisions.

7. The key aspects of the doctrine of rectification are: -

- a) **Nature of the remedy:** *It is a discretionary equitable remedy meaning courts choose to grant it based on fairness and public policy rather than it being an automatic right.*
 - b) **Correction, not remarking:** *Rectification aims to correct a mistake in documenting an agreement, not to create a new contract or change the substantive rights the parties originally intended to agree to.*
 - c) **Common mistake:** *Generally, there must be a common mistake between all parties, meaning both parties believed the document accurately represented their agreements when it did not.*
 - d) **Unilateral mistake:** *in some specific cases, rectification may be granted for unilateral mistake (where only one party is mistaken), provided there was fraud or inequitable conduct by the other party.*
 - e) **Evidence requirement:** *The party seeking rectification must provide strong evidence, leaving little reasonable doubt, that a mistake was made.*
8. What should the court bear in mind when it comes to rectification of legal instrument including the commonly litigated aspect in the law of succession crafted and styled as **Summons for Rectification;**
- a. *There must be a prior completed agreement (either oral or written).*
 - b. *The written instrument must fail to express that agreement.*
 - c. *The mistake must be mutual (common to both parties)*
 - d. *It must not prejudice the rights of third parties acquired in good faith.*
9. I have reviewed the summons of rectification and the affidavit in support dated 16th March 2026 and I am in concurrence with the applicant that the certificate of confirmation of grant be amended and reviewed to read 19th April 2016 instead of 6th September 2018. I make no orders as to costs. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 2ND DAY
OF APRIL 2026**

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R. NYAKUNDI
JUDGE