



Soi v Chepkomet (Succession Cause 2 of 2017) [2024] KEHC 4107 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4107 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 2 OF 2017
RL KORIR, J
APRIL 24, 2024

IN THE MATTER OF THE ESTATE OF KIPSOI ARAP CHEPKOIMET (DECEASED).

BETWEEN
JOHANA KIPKIRUI SOI APPLICANT
AND
ANYESI CHEPKOECH CHEPKOMET OBJECTOR

RULING

1. Johana Kipkirui Soi (Applicant) as one of the administrators of the estate of the late Kipsoi arap Chepkoimet filed an Application on 5th May 2021 seeking rectification of the Grant.
2. The Applicant stated that this court in a Ruling dated 29th April 2020 allocated Anyesi Chepkoech Chepkoimet (Objector and fellow Administrator) 2.6 hectares instead of 2.6 acres in Transmara/ Njipiship/1080. That the resultant Certificate of Confirmation of Grant issued to the Administrators was erroneous as it contained the measurement of 2.6 hectares portion instead of 2.6 acres.
3. It was the Applicant's case that the subdivision of Transmara/Njipiship/1080 was done in acres and that the beneficiaries to the estate of the deceased had consented to the mode of distribution.
4. It was the Applicant's prayer that this court rectifies the portion allocated to Anyesi Chepkoech Chepkoimet from 2.6 hectares to 2.6 acres.

The Response.

5. The Respondent (Anyesi Chepkoech Chepkoimet) stated that they held a family meeting on 8th March 2019 where it was proposed that a surveyor would go to the ground (Transmara/ Njipiship/1080) and ascertain the measurements and demarcation of the parcels of land where each beneficiary lived. That upon the surveyor calculating her acreage, he found the Respondent's portion to be 10.1 acres.



6. It was the Respondent's case that the 2.6 hectares allocated to her by this Court's Ruling of 29th April 2020 went contrary to the wishes of the deceased who had already distributed the estate before he died and he allocated her 10.1 acres. That this court should rectify the mode of distribution and allocate her 10.1 acres.
7. On 2nd March 2023, I directed that the Application be canvassed by way of written submissions.

The Applicant's submissions.

8. The Applicant submitted that his application for rectification was based on an apparent error. That the estate of the deceased was apportioned in hectares to one beneficiary while the other beneficiaries' shares were in acres. The Applicant further submitted that if the Grant remained the way it was, then the Respondent would get 2.6 hectares and not 2.6 acres and the consequence of that would be that other beneficiaries would be left without an inheritance. He relied on Section 74 of the Law of Succession Act, Rule 43 (1) of the Probate and Administration Rules and in the case of re estate of Onesmus Chege Ngani (Deceased) (2017) eKLR.
9. It was the Applicant's case that they had tendered evidence in support of the above in the form of the minutes of a family meeting dated 8th March 2019.

The Respondent's submissions.

10. The Respondent submitted that based on the Minutes of the beneficiaries' meeting, the deceased had before his death subdivided his estate to each household and allocated her 10.1 acres of Transmara/ Njipiship/1080. She relied on the estate of the late Morogo A. Mugun alias Moroko Mukumu (2019) eKLR.
11. It was the Respondent's submission that the 2.6 hectares that this court allocated to her was contrary to the wishes of the deceased. She relied on Scholastica Ndululu vs Agnes Nthenya Suva (2019) eKLR. She further urged this court to uphold the deceased's intentions.
12. The Respondent submitted that this court grants the prayer for rectification and rectify her allocation in Transmara/Njipiship/1080 to be 10.1 acres instead of 2.6 hectares.
13. I have considered the Application for Rectification of Grant dated 4th May 2021, the Replying Affidavit dated 15th November 2022, the Applicant's written submissions dated 4th May 2021 and the Respondent's written submissions filed on 26th April 2023. The only issue for my determination was whether the prayer for rectification of the Grant is merited.
14. The law on rectification of Grants is found in section 74 of the Law of Succession Act which 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.

15. Rule 43(1) of the Probate and Administration Rules provides:-

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 the 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 issued.

16. The above referenced sections of the law have been expounded upon by several court decisions. *In re Estate of Henry Mwithimbu Karigu (Deceased)* (2020) eKLR, the court held:-

“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. I may add that such other minor errors in that genre could also be rectified.”

17. *In the estate of Geoffrey Kinuthia Nyamwinga (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 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. Similarly *in re Estate of James Wainaina Ng’ang’a (Deceased)* (2021) eKLR, the court held:-

“Rectification is allowed in order to correct a mis-description of a property or to correct a name which has not been fully or properly described in the Grant.

.....Rectification of a Grant is only permissible to cure minor errors, mistakes and irregularities in the Grant. Rectification cannot be used to fundamentally alter the character of the Grant.”

19. The Applicant (Johana Kipkirui Soi) stated that they held a family meeting and stated that with the exception of one beneficiary, the other beneficiaries were allocated their portions of land in Transmara/ Njipiship/1080 in acres. He stated that this court’s ruling on 29th April 2020 allocated the Respondent (Anyesi Chepkoech Chepkoiomet) 2.6 hectares instead of 2.6 acres.

20. The Respondent on the other hand stated that when a surveyor took measurements of her portion of land, he found the same to measure 10.1 acres. The Respondent supported the rectification but with a caveat; that she should be allocated the stated 10.1 acres instead of the 2.6 hectares.

21. I have keenly gone through the record and the history of this case. I have noted that from the inception, the suit land (Transmara/Njipiship/1080) had always been referred to or measured in hectares and not acres. When the matter came up for confirmation of the Grant, both parties presented their proposed mode of distribution in hectares. The only time the suit land was referred to or measured in acreage was in the family (beneficiaries) meeting which took place on 8th March 2019.

22. The beneficiaries could not agree on the mode of distribution and asked this court to render a Ruling on the same. This court having considered the evidence before it including the minutes of the aforementioned family meeting delivered its Ruling on 29th April 2020. In its Ruling, the court (Dulu J.) ordered distribution in accordance with the wishes of the deceased who had settled all his 10 households prior to his demise and which wishes all the beneficiaries agreed to uphold with the exception of the Objector Anyesi. The court went ahead and allocated the Objector/Respondent 2.6 hectares in the suit land and further confirmed the Grant.



23. Both parties want rectification so that the Grant can reflect acres instead of hectares. This in my view is not a minor error as the measurement of an acre and a hectare are significantly different.

24. By rectifying the Grant as prayed, this court would be making sweeping and fundamental changes to the mode of distribution and it would go to the core of the distribution of the suit land and affect it. The same could not be effected through a rectification of the Grant. I am guided by *re Estate of Charles Kibe Karanja (Deceased)* 2015 eKLR where the Court held as follows:-

“If..... there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”

25. Flowing from the above, it is my finding that the changes as proposed by the parties do not fall under the ambit of section 74 of the *Law of Succession Act*. The Application in its present form cannot be granted. This Court also observes that the Surveyor’s Report presented by the Objector was only in respect to the portion and not the entire parcel.

26. In order to move this matter forward, I direct the beneficiaries to survey the subject parcel within 30 days of today. The survey should be in accordance with the Ruling of the court dated 29th April 2020 and should also give effect to the Minutes of the family meeting as directed in the Court’s Ruling. Subsequently, parties should provide a fresh schedule and mode of distribution. It is only then that the parties can move this court with a proper application for Review of the Ruling and confirmation or rectification of the Grant.

27. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 24TH DAY OF APRIL, 2024.

.....
R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the objector and in the absence of the petitioner. Siele (court Assistant)

