



In re Estate of Nathan Kimaiyo Tarus (Probate & Administration 68 of 2006) [2024] KEHC 16401 (KLR) (23 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 68 OF 2006
RN NYAKUNDI, J
DECEMBER 23, 2024**

IN THE MATTER OF THE ESTATE OF NATHAN KIMAIYO TARUS (DECEASED)

BETWEEN

ROSALEEN CHELAGAT KOGO PETITIONER

AND

EVILINE ABRAHAM OBJECTOR

Proposal to amend Section 76 of the Law of Succession Act to stop succession cases from indefinite delays

The dispute arose between the petitioner and the objector over the confirmation and distribution of the estate. On July 26, 2024, the court issued a Certificate of Confirmation of Grant to the petitioner. The objector challenged that, arguing that certain properties had been omitted. She filed an application seeking a stay of execution pending appeal. The court considered section 76 of the Law of Succession Act, (the Act), which allowed the revocation or annulment of a grant under specific grounds such as fraud, concealment, or procedural defects. However, the court found no sufficient basis for revocation and ruled that rectification was the appropriate remedy. The stay application was dismissed and the petitioner was directed to file a rectification application within 30 days. The court also recommended for section 76 of the Act to be amended to stop succession cases from dragging indefinitely

Reported by John Ribia

***Law of Succession** – grant – application for grant of letters of administration – where the applicant omitted properties – implications of omission on confirmation of grant – application for stay of confirmation of grant due to omitted properties - whether the existence of omitted properties in an application for grant of letters of administration automatically translated to substantial loss to justify stay of execution of a certificate of confirmation of grant - what were the conditions upon which a court may issue a stay of execution for a certificate of confirmation of grant - whether an application for rectification of grant was a more appropriate remedy than a stay of execution in the circumstances - whether parties in succession disputes risked suffering injustice when the parties in the succession dispute on several occasions obtained a stay in the execution of the execution of the certificate of confirmation of grant – Law of Succession Act (cap 160) section 29, 35, 36, 37, 38, 40, 41, 42, 74, 76, and 83.*



Law of Succession – case management – case timelines – where parties in a succession disputes kept filing applications to delay the conclusion of the process – solutions - what was the ideal process in which successions proceedings should be undertaken by courts - what measures should courts adopt to ensure stricter case management in Succession Cases to ensure that the disputes are resolved within the timelines set under the Law of Succession Act - whether section 76 of the Law of Succession Act should be amended to stop succession cases from dragging indefinitely – Law of Succession Act (cap 160) section 29, 35, 36, 37, 38, 40, 41, 42, 74, 76, and 83.

Statutes – interpretation of statutes – section 76 of the Law of Succession Act - proposed amendment to improve case management - whether section 76 of the Law of Succession Act should be amended to stop abuse by applicants that filed endless applications to reduce indefinite delays in succession cases.

Brief facts

The dispute arose between the petitioner and the objector over the confirmation and distribution of the deceased’s estate. On July 26, 2024, the court issued a Certificate of Confirmation of Grant to the Petitioner. However, the objector challenged the confirmation, arguing that some properties and 2000 shares in Chipokaa House Limited had been omitted. The objector subsequently filed an application that sought a stay of execution of the grant’s confirmation pending appeal.

Issues

- i. What was the ideal process in which successions proceedings should be undertaken by courts?
- ii. What were the conditions upon which a court could issue a stay of execution for a certificate of confirmation of grant?
- iii. Whether the existence of omitted properties in an application for grant of letters of administration automatically translated to substantial loss that would justify stay of execution of a certificate of confirmation of grant.
 - a) Whether an application for rectification of grant was an appropriate remedy than a stay of execution in the circumstances.
- iv. Whether parties in succession disputes risked suffering injustice when the parties in the succession dispute on several occasions obtained a stay in the execution of the certificate of confirmation of grant.
- v. What measures should courts adopt to ensure strict case management in Succession Cases to ensure that the disputes are resolved within the timelines set under the Law of Succession Act?
- vi. Whether section 76 of the Law of Succession Act which allowed revocation or annulment of a grant under specific grounds such as fraud, concealment, or procedural defects; should be amended to stop abuse by applicants that filed endless applications to ensure that succession cases don’t dragging indefinitely.

Held

1. While the power to grant or refuse stay was discretionary, such discretion must be exercised judiciously based on established principles. The court must balance two competing interests:
 1. that a successful litigant should not be denied the fruits of their judgment without compelling reason; and
 2. that the right of appeal, where properly pursued, should not be rendered nugatory.
2. In examining an application for stay of execution of the certificate of confirmation of grant, the court must consider several interconnected aspects that form the foundation of any stay application in succession matters. The court must first determine whether the mere filing of a Notice of Appeal provided sufficient basis for granting a stay, particularly given the special nature of succession proceedings. That analysis naturally led to the question of whether the applicant had demonstrated the substantial loss that would result without the stay. Those considerations ultimately guided the court in determining whether the threshold for preserving the subject matter pending appeal had been met, bearing in mind the delicate balance between protecting appellate rights and ensuring the orderly administration of estates.



3. A notice of appeal, being merely an expression of intention to appeal, was insufficient on its own to support a stay application. An applicant must demonstrate more than just an intention to appeal, they must show an arguable appeal with reasonable chances of success. In the instant case, while the applicant contended that the intended appeal was arguable, no specific grounds demonstrated the appeal's merit have been placed before the court.
4. The applicant must establish factors that show execution will create a state of affairs that will irreparably affect or negate the very essential core of the appeal. A mere apprehension of loss was insufficient. The applicant's affidavit simply stated that the appeal would be rendered nugatory without a preservative order, but failed to demonstrate specific, tangible loss that would occur. Proof of substantial loss was the cornerstone of stay applications.
5. The respondent's confession of omitted properties rather than strengthening the case for stay, pointed to the need for a different remedy namely, rectification of the certificate of confirmation under section 74 of the Law of Succession Act. The existence of omitted properties did not automatically translate to substantial loss that would justify stay of execution of the entire certificate.
6. The applicant lacked evidence to support the assertions. The court had been left to speculate whether a proper case had been made out. The court's discretion must be exercised based on concrete evidence, not speculation. The applicant had not met the threshold for grant of stay of execution.
7. The jurisdiction to grant a stay or a suspension of an order made on the merits of the issues canvassed must be based upon the principles of justice which required that the court should be able to take steps to ensure that its final judgments were not rendered valueless.
8. The succession cause was initiated before the High court back on March 7, 2006. Parties had not taken positive steps to comply with the Succession Act which set the timelines on litigation on matters governed by the Act. The normal rule was that upon issuance of the initial grant of letters of administration, the administrator/administrators were under a duty to confirm the grant within six months from the date of issuance of that initial instrument. In the event the administrator or co-administrators failed to do so, they had to make out a case by evidence which showed special circumstances why they had not complied with the timeframe of six months to file summons for confirmation of grant.
9. The administrators had been litigating over and over again, changing legal counsels when a need arose without addressing the subject matter of identifying the free assets of the intestate estate and the beneficiaries to benefit from the aforesaid estate. The best they could hold onto as an order of finality of the court was a certificate of confirmation of grant issued on July 26, 2022. In terms of the law, that was impunity and an affront to the administration of justice. The Notice of change and appointment of the advocates from the record of the case who took over proceedings on behalf of the respective beneficiaries were a threat to Order 9 Rule 9 of the Civil Procedure Rules.
10. If that record was anything to go by, which succession statute or Act should be specifically legislated by the National Assembly to take care of the myriad interests of the beneficiaries birthed in Uasin Gishu County. Maybe the purpose of such a legislation might improve the chances of the court being able to do justice to the many pending succession matters before the county. In practice, as things stood, it was hard to tell or predict what was withholding the beneficiaries of an intestate estate in complying with the provisions of the Succession Act. The jurisdiction of the Probate Court had been diligently exercised and proper grant of letters of administration issued but the enforcement of it by the administrators remains a pipe dream.
11. The very principles governing the jurisdiction to distribute the intestate estate to the beneficiaries in consonant with section 29 as read together with section 35,36,37,38,40,41 and 42 of the Succession Act were completely ignored and the proceedings left in limbo pending either the transfer of the session judge or change of legal counsel to file yet another interlocutory application notwithstanding that the



- subject matter in question was *res judicata* under section 7 of the Civil Procedure Act by virtue of the Certificate of Confirmation of Grant.
12. The parties tended to exploit the provisions of section 76 of the Succession Act on revocation or annulment of the already issued instrument to govern distribution of the estate but that was never the letter or spirit of the statute. Therefore, never was the letter or spirit of the law of Succession to create a provision which defeated the entire objective on identifying the free property of the deceased together with the legitimate beneficiaries and had it distributed within a period of six months. In essence these proceedings filed intergenerationally and ad-infinitum to annul or revoke the Certificate of Confirmation without adherence to the provisions of the Act, was an abuse of the court process.
 13. The time limit for the making of the grant of representation and subsequent confirmation of grant was strict, if the reading of the provisions the Succession Act was anything to go by in interpreting it as a whole. While other statutory provisions which address matters outside succession, every effort was taken to adhere to procedural and substantive justice, one had got to acknowledge that was not the case in succession disputes. Time has come for the legislature to revisit and legislate an amendment touching on the ambiguity in the language as it stood that a grant issued whether confirmed could be revoked or annulled at any time grounded on the following as specifics of section 76 of the Succession Act.
 14. The nub of the succession process was as follows:
 1. A party desirous to petition for grant of letters of administration had to go through the necessary protocols provided for in the Succession Act.
 2. The petition was forwarded to the government printer for gazettelement.
 3. Upon action by the government printer, a notification or an advert was placed in the relevant notice indicative of a fixed a date of thirty days for any beneficiary, interested.
 4. If there was an objection raised against the making of the grant of letters of administration, the same according to the courts performance management understanding measurement must be heard and determined within 90 days fifth, dependent upon the outcome of the subject matter. The appointed administrators shall be at liberty to move with speed to apply the law, to file for summons for confirmation of grant.
 5. In line with the provisions of the act, it followed that a certificate of confirmation shall be issued to confront the sharing of the estate to the beneficiaries. It would be seen and appreciated therefore that the Certificate of Confirmation of Grant was akin to the final decree on which the probate courts gave a definitive order on the cause of action in succession matters.
 6. The practical effect of that approach envisaged in the Law of Succession Act, was for the court to monitor transmission of the estate in accordance with the Certificate of Confirmation of Grant within six months under section 83 of the Succession Act and finally call for a probate account as a consequence of which, the administrators duly appointed shall be discharged of any obligations. That unfortunately was never the jurisdiction exercised in Kenya's legal system in so far as succession matters as the rules specifically stated during the promulgation by the legislature.
 15. In respect of overhaul application of the Law of Succession Act, the principles which should guide the courts in deciding whether or not to revoke the confirmed grant or to grant leave to appeal must revolve around an important question of law. The question must be one not merely affecting the rights of busy bodies but rights of particular beneficiaries who must demonstrate compelling and substantial reasons why the issues on notification, consent, non-disclosure, procedural and substantive issues on the administration of the estate were never within their knowledge in a timely manner but came into their possession after 20, 30 or 40 years to require them to raise a claim under section 76 of the Succession Act.
 16. The situation before the court was not qualifying absolutely as a matter which had contributed to the delay of the litigation in the succession cause. Some of the succession matters which had been



- entertained by courts in the various forums could be better be described as vexatious suits instituted by the beneficiaries suing themselves or against each other with intention of annoying or embarrassing the person against whom they were filed. The proceedings were so obviously untenable or manifestly groundless as to be utterly hopeless to secure or vindicate any rights as known in the Succession Act.
17. One potential pathway was for the Kenyan people through the National Assembly to take remedial action and other measures to propose an amendment to section 76 of the Succession Act to empower the court to dismiss any applications considered vexatious which delay the final distribution of the property to the legitimate beneficiaries. The approaches to case management by the Deputy Registrars of the respective High Courts must be coordinated from a number of perspectives to oxygenate section 83(g) of the Law of Succession to facilitate the delivery of the probate accounts by the administrators and thereafter have them discharged within the scope of their appointment. That automatically would act as a barrier for any party instigating other proceedings to a liquidated intestate estate as that would not be appropriate and tenable.
 18. The Law of Succession Act under section 74 provided the mechanism for dealing with errors or omissions in grants. From the wording of the said provision and rule 43 of the Probate and Administration Rules, the scope of rectification of grant was 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.
 19. Rectification was the appropriate remedy where there were clear omissions or errors in a grant. The purpose of rectification was not to re-open the entire distribution but to correct specific errors or omissions while maintaining the integrity of the properly confirmed portions of the grant.

Application dismissed.

Orders

- i. *The respondent was to file a formal application for rectification of the Certificate of Confirmation within 30 days of the instant ruling, specifically addressing the omitted properties.*
- ii. *Upon filing of the rectification application, the matter shall be listed for directions within 14 days.*

Citations

Cases

Kenya

1. *Butt v Rent Restriction Tribunal* Civil Application 6 of 1979; [1979] KECA 22 (KLR); [1982] KLR 417 - (Explained)
2. *In re Estate of Erasto Kiwanga Tole (Deceased)* Succession Cause E002 of 2021; [2022] KEHC 1711 (KLR) - (Explained)
3. *In re Estate of Joseph Kibera Gituro (Deceased)* Succession Cause 548 of 2007; [2019] KEHC 4450 (KLR) - (Explained)
4. *Machira t/a Machira & Co Advocates v East African Standard* Civil Case 612 of 1996; [2002] KEHC 1167 (KLR); [2002] KLR 63 - (Explained)
5. *Wangalwa, James & another v Agnes Naliaka Cheseto* Miscellaneous Application 42 of 2011; [2012] KEHC 1094 (KLR) - (Explained)

Statutes

Kenya

1. Civil Procedure Act (cap 21) section 7 - (Interpreted)
2. Civil Procedure Rules, 2010 (cap 21 Sub Leg) order 9 rule 9 - (Interpreted)
3. Court of Appeal Rules, 2022 (cap 9 Sub Leg) In general - (Cited)
4. Law of Succession Act (cap 160) sections 29; 35; 36; 37; 38; 40; 41; 42; 74; 76; 83- (Interpreted)
5. Probate and Administration Rules, 1980 (cap 160 Sub Leg) rule 43- (Interpreted)



Advocates

Mr. Wainaina for the Objector

RULING

1. The objector filed an application dated November 6, 2024 seeking for orders that:
 - a. Spent
 - b. There be a stay of the enforcement of the Certificate of Confirmation of grant and or the distribution of the estate pending the hearing interparties and the determination of the application.
 - c. The enforcement of the Certificate of Confirmation of grant and or the distribution of the estate be and is hereby stayed pending the hearing and determination of the intended appeal.
 - d. Costs be in the cause.
2. The application is supported by an affidavit sworn by Eviline Abraham together with grounds thereof being; that on September 25, 2024 this court delivered a ruling disallowing the application for revocation of grant of letters of administration issued to the petitioner; that the applicant filed a notice of appeal against the decision of this court made on September 20, 2024 disallowing the application for revocation and subsequent revocation of the letter of grant of administration issued to the Petitioner; that the honorable court's decision is the subject of challenge in the intended appeal to the Court of Appeal; that the intended appeal is arguable; that the notice of appeal has been filed without delay; that the applicant's intended appeal will be rendered nugatory in the event a preservative order restraining the respondent by himself, his agents or servants, employees or any other assigns or representatives from in any way dealing with the estate of the deceased is not issued.
3. In response to the application, the respondent through her written witness statement made the following significant averments:
 - a. That the Certificate of Confirmation to the estate of the deceased was confirmed and issued to me on July 26, 2024.
 - b. That the said Certificate of confirmation has errors on the face of it in that some of the properties of the estate were left out, which include Itigo Farm-LR No 8309, Turbo Town Plot & 2000 shares at Chipokaa House limited
 - c. That it is vital to so rectify the confirmation of grant by rectifying the parcel of land to include the following properties left out being: Itigo Farm-LR No 8309, Turbo Town Plot & 2000 shares at Chipokaa House Limited.
 - d. That the notice of appeal is merely an intention to appeal and is not by itself sufficient to support an application for stay.
 - e. That under the *Court of Appeal Rules*, the applicant who seeks to secure a stay of execution should demonstrate an arguable case and show that the intended appeal would be rendered nugatory if the stay is not granted.
 - f. That the applicant has not placed before the Honorable court evidence to support its application, hence the court has been left to speculate whether such a case has been or has not been made out by the applicant.



Analysis and Determination.

4. The application before this court seeks stay of execution of the Certificate of Confirmation of Grant issued on July 26, 2024. The primary issue for determination is whether the applicant has met the threshold for grant of stay of execution pending appeal.
5. The jurisprudence on stay of execution is well-settled. The Court of Appeal in *Butt v Rent Restriction Tribunal* [1982] KLR 417 established that while the power to grant or refuse stay is discretionary, such discretion must be exercised judiciously based on established principles. The court must balance two competing interests: first, that a successful litigant should not be denied the fruits of their judgment without compelling reason; and second, that the right of appeal, where properly pursued, should not be rendered nugatory.
6. In examining this application, the court must consider several interconnected aspects that form the foundation of any stay application in succession matters. The court must first determine whether the mere filing of a notice of appeal provides sufficient basis for granting a stay, particularly given the special nature of succession proceedings. This analysis naturally leads to the question of whether the applicant has demonstrated the substantial loss that would result without the stay. These considerations ultimately guide the court in determining whether the threshold for preserving the subject matter pending appeal has been met, bearing in mind the delicate balance between protecting appellate rights and ensuring the orderly administration of estates.
7. On the first aspect, the respondent correctly posits that a notice of appeal, being merely an expression of intention to appeal, is insufficient on its own to support a stay application. An applicant must demonstrate more than just an intention to appeal, they must show an arguable appeal with reasonable chances of success. In the present case, while the applicant contends that "the intended appeal is arguable," no specific grounds demonstrating the appeal's merit have been placed before this court. The application merely states that "the honorable court's decision is the subject of challenge" without elaborating on the specific grounds of challenge or their merit.
8. Regarding substantial loss, the threshold is particularly high. As established in *Machira t/a Machira & Co Advocates v East African Standard* (No 2) [2002] KLR 63, and reinforced in the recent succession matter of *Erasto Kiwinda Tole* (Succession Cause No E002 of 2021). The Court in *Machira t/a Machira & Co Advocates v East African Standard* (*supra*) stated as follows:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under order 42 rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
9. The applicant must establish factors that show execution will create a state of affairs that will irreparably affect or negate the very essential core of the appeal. A mere apprehension of loss is insufficient. The applicant's affidavit simply states that the appeal will be rendered nugatory without a preservative order, but fails to demonstrate specific, tangible loss that would occur. This falls short of the standard



established in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, where the court emphasized that proof of substantial loss is the cornerstone of stay applications.

10. The respondent's admission regarding omitted properties (Itigo Farm-LR No 8309, Turbo Town Plot & 2000 shares at Chipokaa House Limited) presents an interesting dimension. However, this admission, rather than strengthening the case for stay, actually points to the need for a different remedy namely, rectification of the Certificate of Confirmation under section 74 of the *Law of Succession Act*. The existence of omitted properties does not automatically translate to substantial loss that would justify stay of execution of the entire certificate.
11. A critical factor that weighs heavily against granting stay is the absence of evidence supporting the applicant's assertions. As the respondent correctly points out, the court has been left to speculate whether a proper case has been made out. This runs contrary to the principle established in numerous authorities that the court's discretion must be exercised based on concrete evidence, not speculation.
12. Having carefully considered the application against established principles and authorities, I find that the applicant has not met the threshold for grant of stay of execution. The application is premised largely on general assertions without specific supporting evidence of substantial loss. The applicant has neither demonstrated an arguable appeal beyond mere filing of a Notice of Appeal nor offered any security for due performance.
13. The court's jurisdiction to grant a stay or a suspension of an order made on the merits of the issues canvassed must be based upon the principles of justice which require that the court should be able to take steps to ensure that its final judgments are not rendered valueless. The essential question for the court in relation to this succession cause is whether given its period it has been litigated as between the beneficiaries, there is a risk of injustice to one or both parties if it grants stay of execution of the Certificate of confirmation.
14. I have taken the liberty to appreciate the facts of this succession cause since it was initiated before the High court way back on March 7, 2006. It is clear parties have not taken positive steps to comply with the *Succession Act* which sets the timelines on litigation on matters governed by the *Act*. The normal rule is that upon issuance of the initial grant of letters of administration, the administrator/administrators are under a duty to confirm the grant within six months from the date of issuance of that initial instrument. In the event the administrator or co-administrators fail to do so, he, she or they have to make out a case by evidence which shows special circumstances why they have not complied with the timeframe of six months to file summons for confirmation of grant.
15. The record bears me witness that the administrators have been litigating over and over again, changing legal counsels when a need arises without addressing the subject matter of identifying the free assets of the intestate estate and the beneficiaries to benefit from the aforesaid estate. The best they can hold onto as an order of finality of this court is a certificate of confirmation of grant issued on July 26, 2022. In terms of the law, that is what one can call impunity and an affront to the administration of justice. The Notice of change and Appointment of the advocates from the record of this case who take over proceedings on behalf of the respective beneficiaries are a threat to Order 9 Rule 9 of the *Civil Procedure Rules*. Sometimes I wonder if this record is anything to go by, which succession statute or act should be specifically legislated by the National Assembly to take care of the myriad interests of the beneficiaries birthed in Uasin Gishu County. Why do I say so, maybe the purpose of such a legislation might improve the chances of the court being able to do justice to the many pending succession matters before this county.
16. In practice, as things stand now, it is hard to tell or predict what is withholding the beneficiaries of an intestate estate in complying with the provisions of the *Succession Act*. The jurisdiction of the



probate court has been diligently exercised and proper Grant of letters of administration issued but the enforcement of it by the administrators remains a pipe dream. The very principles governing the jurisdiction to distribute the intestate estate to the beneficiaries in consonant with section 29 as read together with section 35,36,37,38,40,41 and 42 are completely ignored and the proceedings left in Limbo pending either the transfer of the session judge or change of legal counsel to file yet another interlocutory application notwithstanding that the subject matter in question is *res judicata* under section 7 of the [Civil Procedure Act](#) by virtue of the Certificate of Confirmation of Grant. The parties tend to exploit the provisions of section 76 of the [Act](#) on revocation or annulment of the already issued instrument to govern distribution of the estate but that is never the letter or spirit of the statute. Therefore, never is the letter or spirit of the law of Succession to create a provision which defeats the entire objective on identifying the free property of the deceased together with the legitimate beneficiaries and have it distributed within a period of six months. In essence these proceedings filed intergenerationally and ad-indefinitum to annul or revoke the Certificate of Confirmation without adherence to the provisions of the [Act](#), is an abuse of the court process.

17. The time limit for the making of the grant of representation and subsequent confirmation of grant is strict, if the reading of the provisions the [Succession Act](#) is anything to go by in interpreting it as a whole. It is significant to note that while other statutory provisions which address matters outside succession, every effort is taken to adhere to procedural and substantive justice, one has got to acknowledge that is not the case in succession disputes. On the basis of these few facts alone, time has come for the legislature to revisit and legislate an amendment touching on the ambiguity in the language as it stands now that a grant issued whether confirmed can be revoked or annulled at any time grounded on the following as specifics of section 76 of the [Act](#).
18. The nub of the matter is therefore this: First, a party desirous to petition for grant of letters of administration has to go through the necessary protocols provided for in the [Succession Act](#). Second, the petition is forwarded to the government printer for gazette. Third, upon action by the government printer, a notification or an advert is placed in the relevant notice indicative of a fixed date of thirty days for any beneficiary, interested. Fourth, if there is an objection raised against the making of the grant of letters of administration, the same according to our performance management understanding measurement must be heard and determined within 90 days fifth, dependent upon the outcome of the subject matter. The appointed administrators shall be at liberty to move with speed to apply the law, to file for summons for confirmation of grant. Sixth, in line with the provisions of the act, it follows that a certificate of confirmation shall be issued to confront the sharing of the estate to the beneficiaries. It will be seen and appreciated therefore that the Certificate of Confirmation of Grant is akin to the final decree on which the probate courts give a definitive order on the cause of action in succession matters. The practical effect of this approach envisaged in the [Law of Succession Act](#), is for the court to monitor transmission of the estate in accordance with the Certificate of Confirmation of Grant within six months under section 83 of the [Act](#) and finally call for a probate account as a consequence of which, the administrators duly appointed shall be discharged of any obligations. This unfortunately is never the jurisdiction exercised in our legal system in so far as succession matters as the rules specifically state during the promulgation by the legislature.
19. In respect of overhaul application of the [Law of Succession Act](#), I am convinced that the principles which should guide the courts in deciding whether or not to revoke the confirmed grant or to grant leave to appeal must revolve around an important question of law. The question must be one not merely affecting the rights of busy bodies but rights of particular beneficiaries who must demonstrate compelling and substantial reasons why the issues on notification, consent, non-disclosure, procedural and substantive issues on the administration of the estate were never within their knowledge in a timely manner but came into their possession after 20, 30 or 40 years to require them to raise a claim under



section 76 of the Act. I view the situation before me as framed not qualifying absolutely as a matter which has contributed to the delay of the litigation in this Succession cause. Some of the Succession matters which have been entertained by courts in the various forums from my experience can be better be described as vexatious suits instituted by the beneficiaries suing themselves or against each other with intention of annoying or embarrassing the person against whom they are filed. The proceedings are so obviously untenable or manifestly groundless as to be utterly hopeless to secure or vindicate any rights as known in the Succession Act. One potential pathway is for the Kenyan people through the National Assembly to take remedial action and other measures to propose an amendment to Section 76 of the Succession Act to empower the court to dismiss any applications considered vexatious which delay the final distribution of the property to the legitimate beneficiaries. The approaches to case management by the Deputy Registrars of the respective High Courts must be coordinated from a number of perspectives to oxygenate section 83(g) of the Law of Succession to facilitate the delivery of the probate accounts by the administrators and thereafter have them discharged within the scope of their appointment. This automatically will act as a barrier for any party instigating other proceedings to a liquidated intestate estate as that would not be appropriate and tenable.

20. On the question of rectification, the Law of Succession Act under section 74 provides the mechanism for dealing with errors or omissions in grants. From the wording of the said provision and rule 43 of the Probate and Administration Rules, 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.
21. The court *in Re Estate of Joseph Kibera Gituro (Deceased)* [2019] eKLR emphasized that rectification is the appropriate remedy where there are clear omissions or errors in a grant. The purpose of rectification is not to re-open the entire distribution but to correct specific errors or omissions while maintaining the integrity of the properly confirmed portions of the grant.
22. Accordingly, I make the following orders:
 - a. The application dated November 6, 2024 is without merit.
 - b. The respondent shall file a formal application for rectification of the Certificate of Confirmation within 30 days of this ruling, specifically addressing the omitted properties.
 - c. Upon filing of the rectification application, the matter shall be listed for directions within 14 days.
23. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 23RD DAY OF DECEMBER, 2024

R. NYAKUNDI

JUDGE

In the presence of:

Mr. Wainaina Advocate for the Objector

