



**In re Estate of Michael Kipkosgei Kurgat (Deceased) (Probate & Administration
12 of 2011) [2022] KEHC 14047 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 12 OF 2011
RN NYAKUNDI, J
OCTOBER 21, 2022**

IN THE MATTER OF THE ESTATE OF MICHAEL KIPKOSGEI KURGAT (DECEASED)

IN THE MATTER OF

ASCAH KURGAT CHEPTIONY PETITIONER

RULING

1. On May 18, 2022 this court pronounced itself in respect to matter touching on intestate estate of the John Kipkoech Cheptum deceased. Notwithstanding the decision geared towards confirmation of grant of letters of administration, the administrator is yet to extract the certificate of grant on the mode of distribution so adopted by the court. in the course of that default the administrators has deponed in an affidavit filed in court dated July 20, 2022. The gist of the affidavit is to the effect that the deceased had purchased her share in parcel No SergXXXX from Michael Kipkosgei Kurgat. That the referenced vendor has since passed on resulting in the probate court declaring existence of 20 acres for the benefit of the deceased in probate and administration number 12 of 2011.

Decision: legal framework

2. The law on review as contained in section 80 of the [Civil Procedure Act](#) and order 45 rule 1 of the [civil procedure](#) and summarized the circumstances/conditions under which orders for review may be made to be:
 - (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
 - (b) on account of some mistake or error apparent on the face of the record,
 - (c) for any other sufficient reason desires to obtain a review of the decree or order may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.



National Bank of Kenya Ltd vs Ndungu Njau.

' A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.'

Muyodi vs. Industrial and Commercial Development Corporation & Another [2006] 1 EA 243, the court of appeal described an error apparent on the face of the record as follows:

' In *Nyamogo & Nyamogo -vs- Kogo* (2001) EA 174 this court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.' (emphasis mine)

3. Against such a background it is to be noted that section 1(A), 1(B), 3(A) of the *Civil procedure Act* and rule 73(1) of the *Probate And Administration Rules* donates overriding objective and inherent power to this court on which basis the key pillar is underpinned in the interest of justice so as to exercise discretion for or against the sought remedy. The issue in this application is whether on examining the application for review it is open to the court to grant the orders on amendments of the certificate of confirmation initially issued to the grant holder to administer the intestate estate of the deceased. The applicant therefore invites this court to be persuaded by the evidence contained in the affidavit to the effect that John Kipkoech Cheptum was a creditor of parcel of land measuring 20 acres identifiable in SergXXXX. What is new evidence for purpose of this application? It is the discovery of facts relating to that purchase of the measured share from the estate of Michael Kipkosgei Kurgat in the matter of intestate in P & A No 12 of 2011 adjudicated by this very court. In light of those existing circumstances the certificate of confirmed grant issued to the applicant be and is hereby reviewed to incorporate the impugned share being part of the whole in SergXXXX as a benefit to the estate of John Kipkoech Cheptum. To that extent the application is granted as prayed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 21ST DAY OF OCTOBER, 2022.

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R. NYAKUNDI
JUDGE

