



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Melckzadeck Were (Deceased) (Succession Cause
4 of 2020) [2025] KEHC 2216 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 4 OF 2020
SC CHIRCHIR, J
FEBRUARY 20, 2025**

IN THE MATTER OF THE ESTATE OF MELCKZADECK WERE

BETWEEN

BENJAMI TELEWA PETITIONER

AND

EUNICE CHITUYI 1ST OBJECTOR

PHILISTER ANYANGO 2ND OBJECTOR

AND

MARY CHITUYI WERE PROTESTOR

RULING

1. What is coming up for determination is the Application dated 8th December, 2022. The Applicant seeks her inclusion as a beneficiary of the deceased's estate and the variation of the mode of distribution so as to take care of her share in the estate.
2. The Applicant avers that she is the daughter of the deceased; that she was not aware of the proceedings in this cause; that she has been deliberately excluded from benefiting from the estate.
3. She further states that, even though it is alleged that the distribution of the estate was as per the houses, she did not receive any portion despite that she belongs to the same house with Joseph Telewa and Julius Oloko ,who received 4 Acres each and that her late mother , one Teresia Onyango was never mentioned in the succession proceedings.
4. The application is not opposed.
5. When the hearing came up the Applicant informed the court that she was relying solely on the supporting Affidavit.



Determination

6. From the foregoing, the issue for determination is whether the certificate of confirmation of grant should be amended.
7. in In *Re Estate of Njagi Rurima (Deceased)* [2020] eKLR, the court held :

“There is no provision in the Act that permits rectification or amendment by adding a new beneficiary in the grant or to redistribute the estate.”
8. The above position was expounded in *Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR, the court said:

“..... A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or 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 effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.

Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the court has confirmed the grant or a heir or survivor of the deceased who had previously been previously unheard of materializes after distribution, the court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.”
9. The applicant herein seeks that the certificate of confirmation of grant be amended to allow her benefit from the deceased estate as a beneficiary whilst she was not part of the proceedings. Such an amendment goes to the core of the distribution, and completely affects or alters the distribution of the estate as ordered by the court. Such alteration or what is in effect redistribution of the Assets of the estate cannot be effected through an amendment of the certificate of confirmation of grant
10. In the premise, I find that the application is neither well founded nor properly conceived, and I hereby proceed to dismiss the same, for the reasons given.

DATED, SIGNED AND DELIVERED AT ISIOLO ,VIA MICROSOFT TEAM,S THIS 20TH DAY OF FEBRUARY 2025.

S. CHIRCHIR

JUDGE.

In the presence of:

Godwin Luyundi- Court Assistant.

