



REPUBLIC OF KENYA



**In re Estate of Kiberenge arap Keter (Deceased) (Succession Cause
323 of 2014) [2025] KEHC 3062 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 323 OF 2014
RN NYAKUNDI, J
MARCH 14, 2025**

BETWEEN

KIPROTICH KETER TIONY 1ST APPLICANT

ADIJA JEPKEMBOI KETER 2ND APPLICANT

AND

KETER WAMBOK KIPLIMO RESPONDENT

RULING

1. Before me for determination are Summons dated 20/7/2023, in which the Applicants seek the following orders:
 1. Spent.
 2. That there preservation of the estate by temporary stay of transmission and transfer of parcel Soy/Kapsang Block1 (Kimilili) 86 and its subsequent subdivision pending the hearing and determination of this application.
 3. The Certificate of Confirmation of Grant in respect to the estate of the late Kiberenge Arap Keter issued on 15/10/2018 be reviewed and revoked.
 4. That upon the review and or revocation of the Certificate of Confirmation of Grant, a redistribution to the beneficiaries be made in respect to the property of the estate and being parcel Soy/Kapsang Block1 (Kimilili) 86
2. The application is premised on the grounds therein and it is further supported by the Affidavit sworn by the 1st Applicant on the same date.
3. In the Affidavit, the 1st Applicant deposed that he is one of the Administrators of the estate herein together with Mary Jepsaat Keter, that they Petitioned for Letters of Administration Intestate with



respect to the estate herein and were issued with the Grant of Letters of Administration on 29/07/2015 and that they subsequently applied for confirmation of Grant and the same was confirmed and a Certificate of Confirmation of Grant was issued on 15/10/20218. He further deposed that the deceased was a polygamous man and had two houses made out as follows:

4. The 1st Applicant further deposed that he is a beneficiary of the 1st house together with other beneficiaries, that the widow of the 1st house Mary Jeptoo Keter (Deceased), their mother pre-deceased their father, that during the preparation of the mode of distribution, the majority of the beneficiaries of the 1st House agreed and consented to have their brother Keter Wambok Kiplimo, the Respondent, to hold in trust a portion of 4 acres in parcel of land known as Soy/Kapsang Block 1 (Kimilili)86 for himself and the beneficiaries of the 1st House and the other portion of 4 acres of the property was distributed among beneficiaries of the 2nd House, that they agreed with the decision to have their brother to hold in trust the said portion because he lives within the homestead of their late parents whereas the rest of the beneficiaries have established their homes in other parts of the Republic of Kenya. The 1st Applicant maintained that the consent on the mode of distribution and the Affidavit in support of summons for Confirmation of Grant did indicate that the portion of 4 acres allocated to the 1st house was to be held in trust by the Respondent. However, the Certificate of Confirmation of Grant does not indicate that the portion of the 1st House is to be held in trust by the Respondent for himself and other beneficiaries and that inadvertently, they may have not indicated in the mode of distribution that the 4 acres was to be held in trust by the Respondent for himself and other beneficiaries.
5. The 1st Applicant contended that the Respondent has now asserted that the property is his and that they were ignorant and or foolish to have the portion of the 1st House distributed entirely to him and that he is not holding the property in trust for anyone but for himself, that the Respondent has threatened to sell/ dispose of the property, for his own benefit, that the Respondent has further chased them and prevented them from accessing their parents home and that he has threatened them that if they ever go near his property, he will harm them. The 1st Applicant further contended that they have been blocked from accessing their parents homestead and their gravesites, that all the beneficiaries/ children of the 1st household save for the Respondent cannot access the home of their late parents.
6. The Applicants urged the Court to preserve the estate pending the determination of the matters and to also have the Certificate of Confirmation of Grant reviewed and revoked and the 4 acres entitled to the 1st Household be redistributed to the beneficiaries of the 1st Household.
7. The Application is unopposed. There is an Affidavit of Service on record dated 14/02/2025 showing that the Respondent was served but chose not to participate in the proceedings herein .

Determination

8. Having appreciated the pleadings on record, I find that the only issue for determination is whether the Court herein should review its orders made on 6/06/2018 at the Confirmation of Grant.
9. With regard to the issue of revocation of the Certificate of Confirmation Grant, from onset it must be noted that law does not provide for revocation of the Certificate of Confirmation of grant but rather it provides for the amendment of the Grant.
10. The Court in *In Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR, held that:

“It goes without saying that the provisions in Section 74 are on alteration of grants of representation, not certificates of confirmation of grant. A certificate of confirmation of grant is not a grant of representation. In probate practice, the term “confirmed grant”



has gained currency and it is understood by some to mean the certificate of confirmation of grant. It is a misconception. The certificate issued upon a grant being confirmed does alter the grant of representation made in the matter. It does not replace the grant of representation, and it is not the confirmed grant. It is an instrument to certify that the grant made in the matter has been confirmed. In short it is the evidence of the confirmation of the grant. From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the court through Section 74 of the *Law of Succession Act*, for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate.

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.

The proper approach ought to be an application for review of the orders made at the confirmation of the grant. The remedy of review of court orders is not directly provided for in the *Law of Succession Act* and the Probate and Administration Rules, but it is imported into probate practice by Rule 63 of Probate and Administration Rules, which has adopted a number of procedures from the Civil Procedure rules. Among the imported procedures is the device of review under the Civil Procedure Rules. In the relevant rules on review under the Civil Procedure Rules, an order of the court can be revised on the grounds of an error on the face or the record or discovery of new and important evidence that was not available at the time of the making of the order sought to be reviewed or for any other sufficient reason.

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.”

11. In *In Re Estate of John Mwaka Koka (Deceased)* [2019] eKLR, the Court stated that:

“ 19. ... it is clear from the orders sought in this application that what is sought by the applicant herein is strictly speaking not an order for rectification but one for review. Section 74 of the *Law of Succession Act* which deals with rectification states as follows:-



“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose of in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered or amended accordingly.”

20. The reliefs sought are not restricted to rectification of errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose of, in a limited grant. They are in fact prayers which substantially seek to alter the judgement delivered by this court on distribution of the estate. They therefore ought to be treated for what they seek, review of the judgement.”
12. Be as it may, Rule 73 of the Probate and Administration Rules gives the Court power to make orders to meet the end of justice.
13. Is there then an error apparent on the face of the record? It must be noted that the power of review is available only when there is an error apparent on the face of the record. For purposes of clarity review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.
14. Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -
 - “ Any person who considers himself aggrieved—
 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
15. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -
 - “ 1.
 - (1) Any person considering himself aggrieved—
 - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or 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.”

16. In Republic v Public Procurement Administrative Review Board & 2 others [2018] e KLR it was held:

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (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, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

17. In the case of Sarder Mohamed v Charan Singh Nand Sing and Another [1959] EA 793, the High Court held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate.

18. Discussing the scope of review, the Supreme Court of India in the case of Ajit Kumar Rath v State of Orisa & Others, 9 Supreme Court Cases 596 at Page 608, had this to say:-

“the power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” means a reason sufficiently analogous to those specified in the rule”

19. In Tokesi Mambili and others v Simion Litsanga the Court held as follows: -

- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
- ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.

20. In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018 John M. Mativo Judge culled out the following principles from a number of authorities: -

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.



- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
- x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.

21. In the present case, the Applicant want the Court to review its orders made on 16/06/2018 at the time of Confirmation of Grant. The Applicants contended that the share depicted to have been allocated to the Respondent should be shared amongst members of the 1st Household. It is not disputed that the deceased herein was a polygamous man having married two wives and having several issues with said wives. From the record of this Court it is clear that beneficiaries from the two households effectively participated in the proceedings herein to the very end. From my perusal of the pleadings before this Court it is evident that the estate of the deceased comprised of all that parcel of land known as Soy/Kapsang Block 1 (Kimilili) 86 measuring approximately 3.24 Ha which was the only asset in the estate herein and was to be distributed amongst members of two households in light of the proviso of Section 40 of the *Law of Succession Act*, which provides:

“40(1) Where an estate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit in the number of children.



(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in Sections 35 to 38.”

22. The effect of Section 40 is that the property, other than the personal and household effects are to be shared equally among the survivors, with the widows enjoying life interest. However, as evidenced in the Certificate of Confirmation of Grant dated 16/06/2018, the share, being 4 acres in parcel of land known as Soy/Kapsang Block1 (Kimilili) 86 allocated to members of the 1st Household was inadvertently given to Keter Wambok Kiplimo as a nominee and or representative of the said household. His duty in my view was to then devolve the said share to the respective beneficiaries in the 1st Household which has since not happened. The Respondent has rather taken the said share for his selfish gain at the expense of other legitimate beneficiaries in the 1st Household.
23. The Applicants herein have indeed demonstrated that there was mistake or error apparent on the face of the record to warrant this Court to review/ or set aside its orders issued on 16/06/2018.
24. Besides the application falling within the provisions of Section 80 of the *Civil Procedure Act*, and as read with order 45 Rule 1 of the Civil Procedure Rules, there is also a twin issue which has crystallised pursuant to Section 76 of *Law of Succession Act*. In principle the letters of Administration may be revoked when they become in operative as stated in the various grounds advanced in Section 76 of the Act. The question in this matter which arises is whether the distribution of the estate as intended by the court in the certificate of confirmation of grant if left undisturbed would achieve the objective of the law as provided for in Sections 38 & 40 of the Succession Act. According to the affidavit by the Applicants Keter Wambok Kiplimo allocated shares were to be for the benefit of other beneficiaries within the same household. It is apparent that the same has not been actualised. The facts of the instant application are well within the following grounds deducible from Section 76 of the operating Act. The personal representative has filed, after due notice and without reasonable cause either To apply for a confirmation of the Grant within one year from the date thereof, or such longer period as the court order or allow To proceed diligently with the administration of the estate or Produce to the court, within the time prescribed, any such inventory or account of administration or has produced any such inventory or account which is false in any material particular.
25. The application made by the Applicants revolve around non distribution of the shares due to them by the Keter Wambok Kiplimo. Admittedly, he was duly served with the suit papers but elected not to file any replying affidavit as a re-joinder to the issues said to be canvassed before this court. In this respect, Keter Wambok Kiplimo has failed to complete administration of the estate within his lineage of close consanguinity and affinity. These shares though on the face of it appear to have been allocated to Keter Wambok Kiplimo from the affidavit evidence of this application such a distribution was obtained fraudulently by making of false statements and by concealment from court of certain facts which renders the proceedings fatally defective. Following the order of the court, it was plausible for Keter Wambok Kiplimo to proceed diligently and re-distribute the shares to the heirs born of the same household. This has not happened since 16.6.2018. There is no evidence that it will happen any time soon to correct the error apparent on the face of the record as intentioned by the parties and adopted by the probate court of the aforesaid date captioned above. It goes without saying that Keter Wamboki Kiplimo has no interests of the beneficiaries of the estate at heart. It will be therefore in the best interest of justice for this court to make certain declarations to remedy the defect for the law to be followed to the letter.
26. With that said, the orders of this Court issued on 16/06/2018 are hereby reviewed to indicate that the 4 acres share allocated one Keter Wambok Kiplimo is to be shared equally amongst the members of



the 1st Household being; Kiprotich Keter Tiony, Abdalla Kipyego Wambok, Adija Jepkemboi Keter, Fatuma Jepkoech Keter, Sophia Chepleting Keter, Levian Chemutai Keter, Olivia Chelagat Keter and Keter Wambok Kiplimo.

27. In the end, this Court therefore takes the view that the interests of justice are served by giving effect to the wishes of the beneficiaries. The Certificate of Confirmation of Grant be rectified to indicate that the 4 acres share allocated to Keter Wambok Kiplimo is to be shared equally amongst the members of the 1st Household. For avoidance of doubt, I hereby direct that the 4 acres allocated Keter Wambok Kiplimo in parcel of land known as Soy/Kapsang Block 1 (Kimilili) 86 be distributed amongst the following persons; Kiprotich Keter Tiony, Abdalla Kipyego Wambok, Adija Jepkemboi Keter, Fatuma Jepkoech Keter, Sophia Chepleting Keter, Levian Chemutai Keter, Olivia Chelagat Keter and Keter Wambok Kiplimo in equal shares.
28. In the alternative, the certificate of confirmation of grant dated 16.6.2018 in the circumstances of this case be revoked and the questions in distribution be revisited by the beneficiaries to ensure fairness and justice of the matter. Status Conference on 7.4.2025.
29. This being a family matter there shall be no orders as to costs.
30. It is so ordered.

DATED SIGNED AND DELIVERED AT ELDORET THIS 14TH DAY OF MARCH 2025

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R. NYAKUNDI
JUDGE

