



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Khisa Joseph Leo Khaemba (Deceased) (Succession Cause  
161 of 2012) [2025] KEHC 11006 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 161 OF 2012  
RN NYAKUNDI, J  
JULY 28, 2025**

**IN THE MATTER OF THE ESTATE OF KHISA JOSEPH LEO KHAEMBA (DECEASED)**

**RULING**

1. What is pending before me for determination are summons for rectification of Grant dated 16<sup>th</sup> July 2025 brought pursuant to section 73 of the *Law of Succession Act* and Rule 43 & 73 of the Probate and Administration Rules in which the Applicants/Administrators are seeking the following orders:
  1. That the Certificate of Confirmation of Grant issued to Miriam Nekoye Khisa and Miriam Were be rectified in the following respect:
    - a. That the parcel number Uasingishu/Ngenyilel/1622 be included in the intestate.
    - b. That the Property be distributed and registered in the name of Linah Jepkorir Chumba Id No xxxxxxx who purchased from the deceased.
  2. That the costs of this application be in the cause.
2. The application is grounded upon the affidavit sworn by to Miriam Nekoye Khisa and Miriam Were who aver as follows:
  - a. That the deceased passed on 23<sup>rd</sup> March 2007 as per the death certificate in this cause.
  - b. That the administrators of the estate to Miriam Nekoye Khisa and Miriam Were while lodging this succession cause thought that the deceased had transferred the said parcel to Linah Jepkorir Chumba who previously purchased from the deceased.
  - c. That they later after the confirmation realized that the same was still in the deceased's name hence necessitating the filling of this application.
  - d. That the rest of the properties have been distributed to the beneficiaries of the estate.



- e. That we swear this Affidavit in support of our summons for rectification of Grant and the distribution of the property to be as hereunder;

Name description of property shares

Linah Jepkorir Chumba Uasingishu/Ngenyilel-1622 0.40Ha

- f. That it is desirable and in the interest of justice that the above be rectified by this Honourable Court and be pleased to issue a new rectified certificate of confirmation of grant which includes the forgotten property mentioned.

### **Decision**

3. I have read and considered the summons for rectification of Grant and the affidavit in support of the same. The is only issue sole for determination as follows;

### **Whether the summons for rectification of the grant are merited?**

4. The jurisdiction of this court to order for the rectification of grant is granted by section 74 of the *Law of Succession Act*. In particular, section 74 of the *Law of Succession Act* provides as follows;

“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.”

5. The marginal notes under the section states that errors may be rectified by the court. On the other hand, Rule 43(1) of the Probate and Administration Rules provides: -

“Where the holder of grant seeks pursuant to 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 and places of 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 Form110 for such rectification through the registry and in the cause in which the grant was made.”

6. From the wording of these provisions which deal with rectification of grant, 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. In general terms rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors are what rectification seeks to address. In the matter of the Estate of Geoffrey Kinuthia Nyamweinga 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 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....”

7. I take note that the Administrators/Applicants deponed while lodging this succession cause, they thought that the deceased had transferred the said parcel to Linah Jepkorir Chumba who previously



purchased from the deceased and they later after the confirmation of Grant realized that the same was still in the deceased's name hence necessitating the filling of this application.

8. I take note that the proposed distribution of the said property does not prejudice the interests of any other known beneficiaries of the estate as there is no objection over the same and all the beneficiaries filed a consent for the summons of the rectification of grant. In the circumstances, I find the application to be meritorious and accordingly make the following orders:
- a. The Certificate of Confirmation of Grant issued to Miriam Nekoye Khisa and Miriam Were be and is hereby rectified to include Parcel No. Uusingishu/Ngenyilel/1622 as part of the deceased's estate.
  - b. The said property shall be distributed and registered in the name of Linah Jepkorir Chumba, ID No. xxxxxxxx, as a purchaser of the said parcel from the deceased.
  - c. The Administrators, Miriam Nekoye Khisa and Miriam Were, are hereby directed and authorized to sign, execute, and/or present all requisite transfer documents and instruments necessary to effect transfer and registration of Parcel No. Uusingishu/Ngenyilel/1622 in the name of Linah Jepkorir Chumba, as per this order.
  - d. A rectified Certificate of Confirmation of Grant shall issue accordingly.
  - e. Costs shall be in the cause.

**DATED, DELIVERED AND SIGNED AT ELDORET THIS 28<sup>TH</sup> JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

